TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

NOS. 528, and 529.

No. 528.—LOUIS A. VON HOFFMAN AND WILLIAM MERTENS, COPARTNERS AS L. VON HOFFMAN & COMPANY, APPELLANTS, vs. THE UNITED STATES.

No. 529.—THE UNITED STATES, APPELLANTS, vs. THE MANHATTAN SAVINGS' INSTITUTION.

APPEALS FROM THE COURT OF CLAIMS.

FILED JULY 7, 1883.

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INDEX.

	Original.	Print.
Claim transmitted by the Secretary of the Treasury under section 1063 Revised Statutes, filed March 13, 1880	1	1
Petition of L. von Hoffman & Co., filed May 5, 1881	2	1
Traverse of said petition, filed May 26, 1881	13	7
Petition of the Manhattan Savings Institution, filed May 5, 1881	14	7
Traverse of said petition, filed June 15, 1881	19	10
Findings of fact and conclusion of law, filed April 16, 1883	20	10
Opinion of the court	26	18
Final judgment of the court dismissing petition of L. von Hoffman & Co.	31	23
Final judgment of the court in favor of the Manhattan Savings Institution	32	23
Application of L. von Hoffman & Co. for an appeal and allowance of same.	33	23
Application of defendants for an appeal in the case of the Manhattan Savings Institution, and allowance of same	34	24
Certificate	35	24

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Petition of the Manhattan Savings Institution, filed May 5, 1881	14	7
Traverse of said petition, filed June 15, 1881	19	10
Findings of fact and conclusion of law, filed April 16, 1883	20	10
Opinion of the court	26	18
Final judgment of the court dismissing petition of L. von Hoffman & Co.	31	23
Final judgment of the court in favor of the Manhattan Savings Institution	32	23
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Certificate	35	24

1 I.—*Claim transmitted by the Secretary of the Treasury under section 1063 of the Revised Statutes.*

In the Court of Claims.

L. VON HOFFMAN AND COMPANY, WITH THE Manhattan Savings Institution, of New York, as adverse claimant,
versus
THE UNITED STATES. } No. 12272.

It appears of record that this claim, with sundry others, was transmitted March 12, 1880, by the honorable Secretary of the Treasury to the Court of Claims for adjudication, pursuant to section 1063 of the Revised Statutes, and that said claim was filed March 13, 1880.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

2 II.—*Petition of Louis A. von Hoffman and William Mertens, copartners, doing business under the firm-name of L. von Hoffman and Company, vs. The United States, No. 12272.—Filed May 5, 1881.*

To the honorable the judges of the Court of Claims:

The petitioners, Louis A. von Hoffmann and William Mertens, copartners, doing business under the firm-name of L. von Hoffmann & Co., respectfully represent:

I. They are, and were at the times hereafter mentioned, copartners, doing business in the city of New York, as bankers, and as such engaged in the negotiation, purchase, and sale of stocks, bonds, and other securities.

II. Under and in pursuance of the authority conferred upon the Secretary of the Treasury of the United States by the act of Congress approved March 3, 1865, entitled "An act to provide ways and means for the support of the Government," he issued, disposed of, and delivered to bona fide purchasers for value a large number of negotiable bonds of the United States of various denominations, known as "five-twenty bonds," consols of 1865, with interest coupons thereto attached.

III. Among the said bonds so issued, disposed of, and delivered
3 by the Secretary of the Treasury were ten certain bonds of the United States, each of the denomination of $1,000, and bearing date July 1, 1865, whereby by the terms and conditions contained in each of the said bonds the United States of America acknowledged themselves to be indebted unto the bearer in the sum of $1,000, redeemable at the pleasure of the United States after the first day of July, 1870, and payable on the first day of July, 1885, with interest from the first day of July, 1865, inclusive, at six per cent. per annum, payable on the first days of January and July in each year on the presentation of the proper interest coupon thereto annexed, except the six months' interest due July 1, 1885, which by the terms and conditions in each of the said bonds was provided to be payable with the said bond.

Among the said bonds so issued, disposed of, and delivered by the Secretary of the Treasury, as above stated, were also six other bonds of the

United States, each of the denomination of $500, and bearing date July 1, 1865, whereby by the terms and conditions contained in each of said last-mentioned bonds the United States of America acknowledged themselves to be indebted unto the bearer in the sum of $500, redeemable at the pleasure of the United States, after the first day of July, 1870, and payable on the first day of July, 1885, with interest from the first day of July, 1865, inclusive, at six per cent. per annum, payable on the first days of January and July in each year on the presentation of the proper interest coupon thereunto annexed, except the six months' interest due July 1, 1885, which by the terms and conditions in each of the said last-mentioned bonds was provided to be payable with the said bond.

IV. Afterwards, and on or about the 27th day of April, 1867, the Treasury Department issued and delivered to bankers, dealers in Government bonds, and to the public, a circular, of which the following is a copy:

4 "*Loan.*

"TREASURY DEPARTMENT,
"*April* 27, 1867.

"In consequence of the increasing trouble, wholly without practical benefit, arising from notices which are constantly received at the Department, respecting the loss of coupon bonds which are payable to bearer, and of Treasury notes issued and remaining in blank at the time of loss, it becomes necessary to give this public notice that the Government cannot protect, and will not undertake to protect, the owners of such bonds and notes against the consequences of their own fault or misfortune.

"Hereafter all bonds, notes, and coupons payable to bearer, and Treasury notes issued and remaining in blank, will be paid to the party presenting them, in pursuance of the regulations of the Department, in the course of regular business, and no attention will be paid to caveats which may be filed for the purpose of preventing such payment.

"H. McCULLOCH,
"*Secretary of the Treasury.*"

V. The said ten five-twenty bonds, consols of 1865, of the denomination of one thousand dollars each, and the said six "five-twenty bonds," consols of 1865, of the denomination of five hundred dollars each, were purchased and received by the petitioners, at the city of New York, at various dates, between the first day of May, 1879, and the first day of August, 1879, with a large number of other bonds of the United States, from Messrs. R. Raphael & Sons, of London, England, correspondents of your petitioners, in the due and regular course of business, and at the time of the said purchase they paid therefor the full value of the said several bonds in the city of London; and your petitioners so purchased and paid for the said bonds, and each of them, in good faith and without any knowledge, notice, or suspicion that the persons from whom the same were purchased were not the owners thereof and lawfully entitled to the same, and in the full belief that they were such owners and so entitled.

5 VI. The said bonds were of the same form, differing only in the denomination and numbers thereof. A copy of one of the said bonds of the denomination of one thousand dollars is hereto annexed,

marked Exhibit A, and a copy of one of the said bonds of the denomination of five hundred dollars is also hereto annexed, marked Exhibit B.

The numbers upon the said bonds of the denomination of one thousand dollars each were and are as follows, viz: 153,986, 157,844, 166,794, 166,821, 178,650, 187,141, 194,697, 208,069, 208,748, and 208,419.

The number 178,650, upon one of said bonds, is alleged to have been altered from 178,050; the number 194,697, upon another of said bonds, is alleged to have been altered from 194,597; the number 208,748, upon another of said bonds, is alleged to have been altered from 208,746; and the number 208,419, upon another of said bonds, is alleged to have been altered from 209,419.

The numbers upon the said bonds of the denomination of five hundred dollars each were and are as follows, viz: 82,006, 82,144, 86,080, 97,828, 101,110, and 103,421.

The number 97,828, upon one of said bonds, is alleged to have been altered from 97,928.

Your petitioners had no knowledge, notice, or suspicion when they purchased and received the said bonds from Messrs. R. Raphael & Sons, as aforesaid, that there had been any alteration or attempted alteration of the numbers upon the said bonds, or either of them, or that the numbers then borne by the said bonds were not the numbers of the same as issued from the Treasury Department, and your petitioners purchased and received the said bonds as aforesaid in the full belief that the numbers on the said bonds were the numbers of the same as issued from the Treasury Department.

VII. The Secretary of the Treasury, at different dates, gave
6 notice that the principal and accrued interest of certain of the coupon bonds of the United States, dated July 1, 1865, and known as "five-twenty bonds" of the act of March 3, 1865, consols of 1865, would be paid at the Treasury Department as follows, to wit:

On or about July 30, 1878, notice that numbers 82,001 to 84,000, both inclusive, of said bonds of the denomination of five hundred dollars, and numbers 151,001 to 157,000, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after October 30, 1878.

On or about August 5, 1878, notice that numbers 157,001 to 163,500, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after November 5, 1878.

On or about August 7, 1878, notice that numbers 86,001 to 87,000, both inclusive, of the denomination of five hundred dollars, and numbers 163,501 to 169,000, both inclusive, of the said bonds of the denomination of one thousand dollars, would be paid on and after November 7, 1878.

On or about August 16, 1878, notice that numbers 174,001 to 179,000, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after November 16, 1878.

On or about September 4, 1878, notice that numbers 184,001 to 189,000, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after December 4, 1878.

On or about September 16, 1878, notice that numbers 97,001 to 99,000, both inclusive, of said bonds of the denomination of five hundred dollars, would be paid on and after December 16, 1878.

On or about November 16, 1878, notice that numbers 99,001 to 102,000, both inclusive, of said bonds of the denomination of five hundred dollars, and numbers 193,001 to 197,900, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after February 16, 1879.

7 On or about November 27, 1878, notice that numbers 102,001 to 210,542, both inclusive, of said bonds of the denomination of five hundred dollars, would be paid on and after February 27, 1879.

On or about December 18, 1878, notice that numbers 204,001 to 210,542, both inclusive, of said bonds of the denomination of one thousand dollars, would be paid on and after March 18, 1879.

VIII. The petitioners having so purchased and received the said bonds, and being in possession thereof as aforesaid, forwarded the same to the Secretary of the Treasury at Washington, at different dates between May 10, 1879, and July 28, 1879, both inclusive, for redemption and payment by the United States; and the said bonds were so forwarded and intrusted to the United States for the purpose of procuring the redemption and payment thereof, and for no other purpose, in pursuance of the notices given by the Secretary of the Treasury, on behalf of the United States, that the said bonds would be redeemed and paid if they should be so sent; and the petitioners are advised, and insist, that having received the said bonds for such purpose, and under such circumstances, it was the duty of the United States to have redeemed and paid the same to your petitioners, or to have returned the same to them unpaid and unredeemed.

The said bonds have neither been redeemed and paid by the United States nor returned by them to the petitioners, but the said several bonds are still held by the United States, and remain unredeemed and unpaid.

IX. After the receipt of the said bonds at the Treasury Department the petitioners were informed by the Secretary of the Treasury that it being claimed that the said bonds had been stolen from the Manhattan Savings Institution of New York, the same would be held until

8 the right of ownership should be established, and afterwards that, in accordance with section 1063, Revised Statutes of the United States, he had referred to this honorable court the claim of the petitioners to the present payment by his Department of the said bonds of the United States, which were claimed, as stated by the said Secretary, to be the lawful property of the Manhattan Savings Institution of New York, and were alleged to have been stolen from the banking-house of said institution on or about the 25th day of October, 1878.

X. The petitioners deny that the said Manhattan Savings Institution of New York is the legal owner of the said bonds or of either of them, or has any title to or interest in the said bonds or either of them, or any right to receive or demand the amount thereof; and the petitioners claim and insist that they are the lawful owners of the said bonds and each of them, and are entitled to recover and receive the same from the United States, or the amount thereof, with the interest accrued and due thereon.

XI. By reason of the premises there became and is due from the United States to your petitioners the sum of thirteen thousand dollars in respect of said bonds, with interest at the rate of six per cent. per annum upon five hundred dollars, the principal sum of bond No. 82,006, from July 1, 1878, to

October 30, 1878; upon five hundred dollars, the principal sum of bond No. 82,144, from July 1, 1878, to October 30, 1878; upon one thousand dollars, the principal sum of bond No. 153,986, from July 1, 1878, to October 30, 1878; upon one thousand dollars, the principal sum of bond No. 157,844, from July 1, 1878, to November 5, 1878; upon five hundred dollars, the principal sum of bond No. 86,080, from July 1, 1878, to November 7, 1878; upon one thousand dollars, the principal sum of bond No. 166,794, from July 1, 1878, to November 7, 1878; upon one thousand dollars, the principal sum of bond No. 166,821, from July 1, 1878, to November 7, 1878; upon one thousand dollars, the principal sum of bond No. 178,650, from July 1, 1878, to November 16, 1878; upon one thousand dollars, the principal sum of bond No. 187,141, from July 1, 1878, to December 4, 1878; upon five hundred dollars, the principal sum of bond No. 97,828, from July 1, 1878, to December 16, 1878; upon five hundred dollars, the principal sum of bond No. 101,110, from January 1, 1879, to February 16, 1879; upon one thousand dollars, the principal sum of bond No. 194,697, from January 1, 1879, to February 16, 1879; upon five hundred dollars, the principal sum of bond No. 103,421, from January 1, 1879, to February 27, 1879; upon one thousand dollars, the principal sum of bond No. 208,069, from January 1, 1879, to March 18, 1879; upon one thousand dollars, the principal sum of bond No. 208,748, from January 1, 1879, to March 18, 1879; upon one thousand dollars, the principal sum of bond No. 208,419, from January 1, 1879, to March 18, 1879; which said amount, together with interest as aforesaid, the petitioners are justly entitled to receive from the United States, after allowing all just credits and offsets.

XII. The petitioners are the sole owners of the said claim and alone interested therein.

No assignment or transfer of said claim, or any part thereof or interest therein, has been made.

The petitioners are now, and were at all times hereinbefore stated, citizens of the United States, and have, and each of them has, at all said times borne true allegiance to the Government of the United States, and they have not, nor has either of them, in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The petitioners believe the facts stated in this petition to be true.

Wherefore your petitioners pray that this honorable court will order, adjudge, and decree that they are entitled to the said bonds of the United States above enumerated, and each of them, and are entitled to be paid the amount due on the same by the United States, and that judgment may be rendered accordingly in favor of the petitioners against the United States for the sum of thirteen thousand dollars, together with the interest thereon as aforesaid, namely, the sum of thirteen thousand dollars two hundred and twenty-nine dollars.

L. VON HOFFMANN & CO.,
By WILLIAM MERTENS.

The petitioners' address is 50 Wall street, New York City.

The address of their attorney, J. Hubley Ashton, is 635 F street, Washington, D. C.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

Be it remembered that on this twenty-sixth day of April, A. D. 1881, before the subscriber, a United States commissioner for the district aforesaid, personally appeared William Mertens, one of the petitioners named in the foregoing petition, who, being first duly sworn, deposes and says that he has carefully read the foregoing petition, subscribed by L. Von Hoffmann & Co., by this deponent, William Mertens, and knows the contents thereof, and that he believes the facts as therein stated are true.

WILLIAM MERTENS.

Sworn and subscribed before me this twenty-sixth day of April, in the year one thousand eight hundred and eighty-one.

[SEAL.] JAMES H. GILBERT,
U. S. Commissioner South. Dist. of N. Y.

11 EXHIBIT A.

208,419.] [208,419.

[Consolidated debt. Issued under act of Congress approved March 3, 1865. Redeemable after five and payable twenty years from date.]

1,000.] [1,000.

It is hereby certified that the United States of America are indebted unto the bearer in the sum of one thousand dollars, redeemable at the pleasure of the United States after the first day of July, 1870, and payable on the first day of July, 1885, with interest from the first day of July, 1865, inclusive, at six per cent. per annum, payable on the first day of January and July in each year on the presentation of the proper coupon hereunto annexed. This debt is authorized by act of Congress approved March 3, 1865.

Washington, July 1, 1865.

J. LOWERY,
For Register of the Treasury.

Six months' interest due July 1, 1885, payable with this bond.

(Twelve coupons attached from and including coupon for interest due July 1, 1879, to and including coupon for interest due January 1, 1885.)

12 EXHIBIT B.

97,828.] [97,828.

[Consolidated debt. Issued under act of Congress approved March 3, 1865. Redeemable after five and payable twenty years from date.]

500.] [500.

It is hereby certified that the United States of America are indebted unto the bearer in the sum of five hundred dollars, redeemable at the pleasure of the United States after the first day of July, 1870, and payable on the first day of July, 1885, with interest from the first day of July, 1865, inclusive, at six per cent. per annum, payable on the first day of

January and July in each year on the presentation of the proper coupon hereunto annexed. This debt is authorized by act of Congress approved March 3, 1865.

Washington, July 1, 1865.

J. COLBY,
For Register of the Treasury.

Six months' interest due July 1, 1885, payable with this bond.

(Thirteen coupons attached from and including coupon for interest due January 1, 1879, to and including coupon for interest due January 1, 1885.)

13 III.—*Traverse of petition of L. von Hoffman & Co.—Filed May 26, 1881.*

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

14 IV.—*Petition of the Manhattan Savings Institution, adverse claimants, vs. The United States, No. 12272.—Filed May 5, 1881.*

The petition of the Manhattan Savings Institution respectfully states:

1. That they are a corporation, duly incorporated as such under the laws of the State of New York, and doing business at the city of New York, with full power to purchase, hold, and own bonds of the description hereinafter set forth.

2. That pursuant to an act of Congress of the United States, approved March 3, 1865, the Secretary of the Treasury borrowed eleven millions of dollars and upwards, and issued therefor bonds of the United States, of the class called coupon bonds, dated July 1, 1865, known as "Five-twenty bonds," of the act of March 3, 1865, consols of 1865, bearing interest at the rate of six per centum per annum, among others coupon bonds Nos. 82,006, 82,144, 86,080, 97,928, 101,110, and 103,421, for the principal sum of five hundred dollars each, and Nos. 153,986, 157,844, 166,794, 166,821, 178,050, 187,141, 194,597, 208,069, 209,419, and 208,746, for the principal sum of one thousand dollars each, payable to bearer, with coupons for said interest annexed. That by said act it was provided that

15 said bonds might be made payable at any period not more than forty years from the date of their issue, or might be made redeemable at the pleasure of the Government, at or after any period not less than five years nor more than forty years from date, or might be made redeemable and payable as aforesaid, as might be expressed on their face. That said bonds expressed on their face the fol-

lowing clause, viz: "The United States of America are indebted unto the bearer in the sum of one thousand [or five hundred] dollars, redeemable at the pleasure of the United States after the first day of July, 1870, and payable on the first day of July, 1885, with interest from the first day of July, 1865, inclusive, at six per cent. per annum."

3. That subsequently, and by another act of Congress, approved July 14, 1870, it was provided that the Secretary of the Treasury be thereby authorized as therein set forth, to pay at par and cancel any of the aforesaid bonds; the particular bonds so to be paid and cancelled to be indicated and specified by class, date, and number in public notice to be given by the Secretary of the Treasury; and further, said act provided that in three months after the date of such public notice the interest on the bonds so selected and advertised to be paid should cease.

4. That after the issue of said bonds, and prior to the 27th of October, 1878, the Manhattan Savings Institution purchased, paid the full value for, and received into their absolute possession the bonds hereinbefore described, and from the time of their said purchase continued to hold and was entitled to the same, with all right, title, and interest therein and thereto, down to the 27th of October, 1878, on which day the vaults of said Manhattan Savings Institution were burglariously entered and said bonds stolen therefrom by persons, strangers, acting without the consent or knowledge of said institution or any of its trustees, or its president, secretary, treasurer, or either of its clerks; that said bonds were fraudulently taken away at that time; and have never since been returned to said savings institution, nor has either of them; that said institution has never to this day agreed to sell, or in any way dispose of, or part with, either of said bonds, or any right, title, or interest therein or thereto, and has never sold or disposed of, or consented to part with either of said bonds.

16 5. That immediately after said burglary said savings institution caused public notice to be given in all the leading commercial cities of this country and Europe of such theft of said bonds and of the numbers and particulars thereof, a part of which, in large type, reads as follows, viz:

"IMPORTANT NOTICE!

"The Manhattan Savings Institution was, on the morning of Sunday, the 27th of October, 1878, robbed of * * * United States 5-20s of July, 1865, * * * of $1,000 each, * * * Nos. 153,986, 157,844, 166,794, 166,821, 178,050, 187,141, 194,597, 208,069, 209,419, 208,746; and of $500 each, Nos. 82,006, 82,144, 86,080, 97,928, 101,110, and 103,421.

"All persons are notified not to purchase or negotiate the bonds or securities, or any of them, as the same are the property of the said Manhattan Savings Institution.

"If any of the above bonds are offered you will please notify the police of your city.

"New York, October 27, 1878.

"EDWARD SCHELL,
"*President.*
"CHAS. F. ALVORD,
"*Secretary.*"

That said notice was also sent to all the leading bankers of the world, and among others to the said L. von Hoffman & Co., and to R. Raphael & Sons, London, Great Britain.

6. That thereafter, the numbers of some of said bonds were altered by strangers to said institution, and without its complicity, consent, or knowledge, as follows: No. 178,059 to 178,650; No. 97,928 to 97,828; No. 194,597 to 194,697; No. 209,419 to 208,419, and No. 208,746, to 208,748, with the fraudulent intent of avoiding detection in attempting to sell the same, and to deceive, injure, and wrong any buyer thereof.

7. That pursuant to law, the Secretary of the Treasury gave public notice that the principal and accrued interest of said bonds would be pai at the Treasury of the United States as follows: On or about the 30th day of July, 1878 (call No. 64), that Nos. 82,006, 82,144 and 153,986, would be paid on the 30th of October, 1878; on or about the 5th of August, 1878
17 (call No. 65), that No. 157,844 would be paid on the fifth of November, 1878; on or about the 7th of August, 1878 (call No. 66), that Nos. 86,080, 166,794, and 166,821 would be paid on the 7th of November, 1878; on or about the 16th of August, 1878 (call No. 68), that No. 178,050 would be paid on the 16th of November, 1878; on or about the 4th of September, 1878 (call No. 70), that No. 187,141 would be paid on the 4th of December, 1878; on or about the 16th of September, 1878 (call No. 71), that No. 97,928 would be paid on the 16th of December, 1878; on or about the 16th of November, 1878 (call No. 72), that Nos. 101,110 and 194,587 would be paid on the 16th of February, 1879; on or about the 27th of November, 1878 (call No. 73), that No. 103,421 would be paid on the 27th of February, 1879, and on or about the 18th of December, 1878 (call No. 75), that Nos. 208,069, 209,419, and 208,746 would be paid on the 18th of March, 1879, and that the interest on said bonds would cease upon the days upon which they were respectively made payable, as aforesaid.

8. That after the maturity of the said several "calls," all the said bonds were forwarded for redemption to the Loan Division, Secretary's Office, at the Treasury of the United States, in the city of Washington, by the said claimants, L. von Hoffman & Co., as follows: On or about May 10th, 1879, Nos. 82,006, 153,986, 157,844, 166,794, 187,141, and 208,069; on or about the 31st day of May, 1879, Nos. 101,110 and 103,421; on or about June 20, 1879, Nos. 82,144, 86,080, and 166,821; on or about July 23d, 1879, Nos. 178,050 and 209,419; on or about July 25th, 1879, Nos. 97,928, 194,597, and 208,746.

9. That shortly after the presentation of the said several bonds, respectively, by the said L. von Hoffman & Co., the Secretary of the Treasury notified the said institution thereof, and the said institution immediately claimed payment thereof, as the lawful owner thereof, as aforesaid, and the said institution reiterates and states here that it is now the sole owner of said bonds, and is entitled to receive the amount thereof.

10. That the said institution believes the aforesaid facts to be true.

In consideration of the premises, the said institution prays judg-
18 ment of this honorable court that the said institution is entitled to the said bonds, and to each of them, and to the full amount thereof, viz, to thirteen thousand dollars and interest thereon at the rate of six per cent.

per annum, as per the coupons annexed, to the dates at which they were respectively made payable as aforesaid, and they demand the same as due them, after allowing all just off-sets and credits mentioned and set forth.

MANHATTAN SAVINGS INSTITUTION,
EDWARD SCHELL, *President.*

[Seal of Manhattan Savings Inst'n.]

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Edward Schell, of the city of New York, hereby makes oath that he is the president of said Manhattan Savings Institution; that no assignment or transfer of the claim mentioned and referred to in the foregoing petition, or any part thereof, or interest therein has been made; that said savings institution is justly entitled to the amount therein claimed from the United States, after allowing all just credits and off-sets, and he believes the facts as stated in said petition to be true.

EDWARD SCHELL.

Subscribed and sworn before me this 6th day of April, 1881.
[SEAL.] HENRY W. KENNEDY,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

The post-office address of the Manhattan Savings Institution, claimants, is New York City.

The said claimants' attorney is H. C. Cady, No. 1427 F street, Washington, D. C.

19 V.—*Traverse of the petition of the Manhattan Savings Institution, adverse claimant.—Filed June* 15, 1881.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Ass't Att'y-General.

20 VI.—*Findings of fact and conclusion of law.—Filed April* 16, 1883.

L. VON HOFFMAN & CO. VS. THE UNITED STATES.—THE MANHATTAN SAVINGS INSTITUTION VS. THE UNITED STATES.

FINDINGS OF FACT.

These two cases having been heard together before the Court of Claims, the court, upon the evidence, finds the facts in each case to be as follows:

I.

During the whole of the year 1879, and thereafter until the bringing of this suit, the claimants, Louis A. von Hoffman and William Mertens,

were copartners under the firm-name of L. von Hoffman & Co., engaged in the city of New York, in the business of banking and buying and selling exchange, bonds, and stocks.

II.

At the same time the Manhattan Savings Institution, a corporation created by law of the State of New York, existed and was doing business, and it still exists and does business, as a savings bank, in the city of New York.

III.

On the 27th of October, 1878, the said institution owned, and had in its possession in said banking-house, sixteen coupon bonds of the United States, known as five-twenty bonds, consols of 1865, issued by the United States in pursuance of and in conformity with the provisions of the "Act to provide ways and means for the support of the Government," approved March 3, 1865. Six of said bonds were for $500 each, and ten for $1,000 each. The following is a copy of one of the $1,000 bonds, without the number of it.

Consolidated debt, issued under act of Congress approved March 3d, 1865. Redeemable after five and payable twenty years from date.

1000. Register's office.] [Treasury Department. 1000.

[Engraving of United States Treasury.]

[SEAL.]

It is hereby certified that the United States of America are indebted unto the bearer in the sum of one thousand dollars, redeemable at the pleasure of the United States after the first day of July, 1870, and payable on the first day of July, 1885, with interest from the first day
21 of July, 1865, inclusive, at six per cent. per annum, payable on the first day of January and July in each year on the presentation of the proper coupon hereunto annexed. This debt is authorized by act of Congress approved March 3d, 1865.

(Across the face:) 1000.

Washington, July 1st, 1865.

J. B. COLBY,
For Register of the Treasury.

Each of the $1,000 bonds was in the words and figures of this copy, and each of the $500 bonds was in the same words and figures, except that the words "five hundred" instead of "one thousand" appear in the statement of the sum in the body of the bond, and the figures indicating the sum are 500 instead of 1,000. At each of the upper corners of each of said sixteen bonds, and upon each of the coupons attached to each of said

bonds was printed by types the serial number of the bond, as the same were printed thereon by authority of the Secretary of the Treasury when the bond was issued by the United States. The serial numbers of the bonds were as follows: 8500 bonds, 82,006, 82,114, 86,080, 97,928, 101,110, 103,421; 81,000 bonds, 153,986, 157,844, 166,794, 166,821, 178,050, 187,144, 194,597, 208,069, 208,746, 209,419.

IV.

Early in the morning of Sunday, October 27th, 1878, burglars entered the building in which was the banking-house of said institution, and overpowering the janitor of the institution, opened the iron vault, inside of which was an iron safe which they broke open, and from which they stole and carried away securities of various kinds, representing the value of about two and a half million dollars, among which were the sixteen bonds aforesaid.

It does not appear that the officers or servants of said institution were guilty of any negligence or want of proper care in the safe-keeping of the bonds and securities which were so stolen.

V.

On the 30th of July, 1878, the Secretary of the Treasury made the following call for five-twenty bonds, consols of 1865, for redemption, and gave public notice thereof.

SIXTY-FOURTH CALL.

Redemption of 5-20 bonds of 1865, *consols of* 1865.

[1878. Department No. 82. Secretary's Office.]

TREASURY DEPARTMENT,
July 30, 1878.

By virtue of the authority given by the act of Congress approved July 14, 1870, entitled "An act to authorize the refunding of the national debt," I hereby give notice that the principal and accrued interest of the bonds herein-below designated, known as "five-twenty bonds" of the act of March 3, 1865, consols of 1865, will be paid at the Treasury of the United States, in the city of Washington, on and after the thirtieth day of October, 1878, and that the interest on said bonds will cease on that day:

Coupon bonds, dated July 1, 1865, *namely:*

$50—No. 69001 to No. 69500, both inclusive.
$100—No. 117001 to No. 120000, both inclusive.
$500—No. 82001 to No. 84000, both inclusive.
$1,000—No. 151001 to No. 157000, both inclusive.
Total coupon..... $2,500,000

22 Registered bonds, "redeemable at the pleasure of the United States after the 1st day of July, 1870," as follows:

$50—No. 2351 to No. 2400, both inclusive.	
$100—No. 18351 to No. 18450, both inclusive.	
$500—No. 10601 to No. 10700, both inclusive.	
$1,000—No. 35451 to No. 35850, both inclusive.	
$5,000—No. 9901 to No. 10250, both inclusive.	
$10,000—No. 19051 to No. 19800, both inclusive.	
Total registered	$2,500,000
Aggregate	$5,000,000

The amount outstanding, included in the numbers above, is five million dollars.

All United States bonds, forwarded for redemption, should be addressed to the "Loan Division, Secretary's Office," and all registered bonds should be assigned to "the Secretary of the Treasury for redemption."

Where parties desire checks in payment for registered bonds, drawn to the order of any one but the payee, they should assign them to the Secretary of the Treasury for redemption account of the owner or owners, giving name or names thereof.

[SEAL.] JOHN SHERMAN, *Secretary.*

Afterwards the Secretary of the Treasury made and gave public notice of eight other like calls for five-twenty bonds, consols of 1865, for redemption which embraced others of the sixteen bonds involved in this suit; and the following is a tabulated statement showing the number and date of each of the calls, which embraced any of the said sixteen bonds, and the time when each call matured, together with the number and amount of each of the said sixteen bonds called for redemption, and the amount of interest due on each bond at the maturity of the call embracing it:

No. of call.	Date of call.	Date of maturity of call.	Numbers of bonds.	Denomination of bonds.	Interest due at maturity of call.
64	July 30, 1878	Oct. 30, 1878	82006	$500	$9 94
"	"	"	82114	500	9 95
"	"	"	153386	1,000	19 89
65	August 5, 1878	Nov'r 5, 1878	157844	1,000	20 88
66	Aug. 7, 1878	Nov'r 7, 1878	86080	500	10 60
"	"	"	166794	1,000	21 20
"	"	"	166821	1,000	21 20
68	Aug 16, 1878	Nov'r 16, 1878	178050	1,000	22 68
70	Sept. 4, 1878	Dec'r 4, 1878	187141	1,000	25 64
71	Sept. 16, 1878	Dec'r 16, 1878	97928	500	13 81
72	Nov'r 16, 1878	Feb'ry 16, 1879	101110	500	3 78
"	"	"	194597	1,000	7 56
73	Nov'r 27, 1878	Feb'ry 27, 1879	103421	500	4 68
75	Dec'r 18, 1878	March 18, 1879	208069	1,000	12 49
"	"	"	208746	1,000	12 49
"	"	"	209419	1,000	12 49
				$13,000	$229 28

VI.

Great publicity was given through the newspapers to the fact of the robbery aforesaid, and some kind of a circular was issued by the institution in regard to the robbery, but it does not appear what its terms were, or where or to whom it was sent.

23

VII.

Between the time when said robbery took place and that at which the said sixteen bonds reappeared, as hereinafter set forth, the serial numbers of five of them were wrongfully altered from what they were when stolen from the Manhattan Savings Institution, as above found. The alterations were as follows:

97928	altered to	97828.
178050	"	" 178650.
194597	"	" 194697.
208746	"	" 208748.
209419	"	" 208419.

When, where, or by whom said alterations were made does not appear, there being not the least evidence tending to throw any light on those points.

There was nothing in the appearance of said five bonds, or the numbers thereof, when the bonds were purchased by R. Raphael & Sons, as hereinafter set forth, or when they came into the possession of L. von Hoffman & Co., calculated to excite the suspicion or notice of a prudent and careful man; and the alterations of the numbers were so skillfully effected that they were only discoverable with the aid of a magnifying glass.

VIII.

In the year 1879 there existed in the city of London, England, a firm of bankers styled R. Raphael & Sons, having their place of business at 25 Throgmorton street in said city. Said firm had high respectability and standing in London and elsewhere, and did a very large business in United States Government securities.

At different times in the year 1879 the said R. Raphael & Sons bought in London the sixteen bonds which are the subject-matter of this suit; each and all of which, when so bought, had been called by the Secretary of the Treasury for redemption, as hereinbefore set forth, and the call in each case had matured; and R. Raphael & Sons bought the said bonds with knowledge that they had been so called. They bought them of well-known and responsible parties in London, and paid the full market value of them, to wit, par and accrued interest, without having any reason whatever to suspect that the bonds, or any of them, had been stolen or wrongfully obtained by any person, or that there was any defect in the titles of the persons from whom the purchases were made, or that the numbers of any of the bonds had been changed, or that the numbers on the bonds were not their original and genuine numbers, as issued by the Treasury Department of the United States.

IX.

All of said sixteen bonds were sold by R. Raphael & Sons to the claimants, L. von Hoffman & Co., and sent to the latter in the same condition as when R. Raphael & Sons bought them as aforesaid; and the same were received by L. von Hoffman & Co. in the same condition as when they were sent by R. Raphael & Sons; and L. von Hoffman & Co. paid R. Raphael & Sons the full market price for them, to wit, par and accrued interest, in good faith, without having any reason whatever to suspect that the bonds, or any of them, had been stolen or wrongfully obtained
24 by any person, or that there was any defect in the title to the bonds, or that the numbers of any of the bonds had been changed, or that the numbers on the bonds were not the original and genuine numbers as issued by the Treasury Department of the United States. All of said bonds were received by L. von Hoffman & Co. from R. Raphael & Sons with knowledge that they had been called for redemption, and that the call in each case had matured. The following is a statement of the dates on which the claimants received from R. Raphael & Sons the several bonds aforesaid, the genuine numbers in each case being here given:

May 10, 1879. Nos. 153,986; 82,006; 157,844; 166,794; 187,141 208,069.

May 31, 1879. Nos. 101,110; 103,421.

June 20, 1879. Nos. 82,144; 166,821; 86,080.

July 23, 1879. Nos. 178,050; 209,419.

July 28, 1879. Nos. 97,928; 194,597; 208,746.

The last five numbers here given are those which were altered, as stated in Finding VII, to 178,650; 208,419; 97,828; 194,697; 208,748.

On each of those days the bonds received by L. von Hoffman and Co. on that day were transmitted by them to the Treasury Department at Washington for redemption.

In answer to the transmission of bonds made by L. von Hoffman and Co., on the 10th of May, they received from the Assistant Secretary of the Treasury the following letter:

WASHINGTON, D. C. *May* 13, 1879.

Messrs. L. VON HOFFMANN & Co.,
New York:

GENTLEMEN: Coupon bonds No. 82006, for $500, and Nos. 153986, 157844, 166794, 187141, and 208069, for $1,000 each, act Mar. 3, 1865, consols of 1865, received for redemption with your letter of the 10th inst., are claimed to have been stolen from the Manhattan Savings Institution of New York.

Please cause to be prepared and transmitted to this Department an affidavit setting forth the time of purchase of the bonds referred to, the consideration paid, and whether, at the time the same were received, you were aware that they were claimed by the institution alluded to; together with any other evidence on which you rely to establish your claim of ownership of the bonds in question.

Very respectfully,

JOHN B. HAWLEY,
Ass't Sec'y.

A. G. P.

This letter appears to have been the first intimation received by L. von Hoffman and Co. that any of said sixteen bonds had been stolen.

In answer to the transmission of bonds made by L. von Hoffman and Co. on the 31st of May, they received from the Assistant Secretary the following letter:

WASHINGTON, D. C., *June* 3, 1879.

Messrs. L. VON HOFFMANN & Co.,
New York:

GENTLEMEN: Coupon bonds Nos. 101110 and 103421, for $500 each, act Mar. 3, 1865, consols of 1865, received for redemption with your letters of the 31st ultimo, are claimed to have been stolen from the Manhattan Savings Institution of New York.

The bonds referred to will be held as in previous , until the right of ownership shall have been established.

Very respectfully,

JOHN B. HAWLEY,
Ass't Sec'y.

A. G. P.

25 In answer to the transmission of bonds made by L. von Hoffman and Co., on the 20th of June, no answer from the Treasury Department appears.

In answer to the transmission of bonds made by L. von Hoffman and Co., on the 23d of July, they received from the Assistant Secretary the following letter:

WASHINGTON, *July* 28, 1879.

Messrs. L. VON HOFFMANN & Co.,
New York City:

GENTLEMEN: Coupon bond, originally numbered 178050, but altered to 178650, for $1,000, and coupon bond, originally numbered 209419, but altered to 208419, for $1,000, act March 3, 1865, consols 1865, received with youa letter of the 23d instant for redemption, are said to have been stolen from the Manhattan Savings Institution, of New York, & will be held by the Department until the right of ownership of the same shall have been established.

Very respectfully,

JOHN B. HAWLEY,
Acting Secretary.

This letter appears to have been the first intimation received by L. von Hoffman and Co. that any numbers of said sixteen bonds had been altered.

In answer to the transmission of bonds made by L. von Hoffman and Co., on the 28th of July, they received from the Assistant Secretary the following letter:

WASHINGTON, D. C., *July* 31, 1879.

Messrs. L. VON HOFFMANN & Co.,
New York City:

GENTLEMEN: Coupon bonds Nos. 97928, altered to 97828, for $500, & 194597 & 208746, altered respectively to 194697 & 208748, for $1,000 each, act Mar. 3, 1865, consols 1865, received with your letter of the 28th

inst. for redemption, are said to have been stolen from the Manhattan Savings Institution of New York, and will be held by the Department until the right of ownership of the bonds in question shall have been established. The said bonds are marked on the back with blue pencil, in the order of their numbers, as follows: (1) I. 25, 500, 16 Dec. '78; (2) I. 25, 1,000, 16 Feb., '79; and (3) I. 25, 1,000, 18 March '79.

Very respectfully,

JOHN B. HAWLEY,
Acting Sec'y.

X.

The Secretary of the Treasury retained and still retains in the custody of the Treasury Department the said sixteen bonds, but was ready and willing to pay the amount thereof, with the interest which had accrued on each of them, to the legal owners thereof respectively whenever it should appear who were such legal owners; but he referred the question of the conflicting rights of the several persons claiming to be owners of the bonds to the Court of Claims by the following letter:

TREASURY DEPARTMENT, *March* 12, 1880.

To the honorable Chief Justice and the justices of the Court of Claims:

Whereas Messrs. L. von Hoffman & Co. and others have filed in this Department and claimed therefrom the present payment to them, respectively, of certain bonds which were issued by the United States in the year 1865, under the provisions of the act of Congress approved March 3, 1865, which bonds are commonly called "coupon bonds" and "consóls of 1865," and which bonds, so demanded, are described in a certain list or schedule attached hereto marked A, wherein are stated the number and denomination of each bond, the payment of which is so claimed, the number of the call made by this Department upon the owner thereof to present the same for payment, the date of the call, and the date of the maturity thereof, the name of each person, or firm, or bank which presented said bonds to this Department and claimed payment thereof, together with the dates of the several letters transmitting said bonds to this Department;

26 And whereas the bonds set forth in said Schedule A are claimed as the lawful property of the Manhattan Savings Institution of New York, from the banking house of which said institution it alleges that they were stolen on the 27th day of October, 1878;

And whereas said institution also claimed from this Department the present payment of said bonds as promised in its calls therefor;

And whereas the claims presented by the persons, firms, and corporations named in said Schedule A and said savings institution, and the proper and lawful payment of the bonds therein described, involve disputed facts and controverted questions of law, when the amount in controversy exceeds $3,000, and when the decision therein will affect a class of cases and furnish a precedent for the future action of this Department in the adjustment of a class of cases: I do herewith transmit to your honorable court, in compliance with section 1063 Revised Statutes, the said several claims of the persons, firms, and corporations named in said Schedule A, and also the claims of said savings institution, with the vouchers, pa-

pers, proofs, and documents pertaining to each of said claims, that the same may be proceeded in in your honorable court as if originally commenced therein by the voluntary action of each of said claimants.

Very respectfully,

JOHN SHERMAN,
Secretary.

Upon the foregoing facts the conclusion of law is, that the petition of L. von Hoffman & Co. should be dismissed, and that the Manhattan Savings Institution is entitled to recover the amount of the bonds sued on, namely, principal, $13,000, and interest, $229.28, on the grounds set forth in the following:

VII.—*Opinion of the court.*

DRAKE, Ch. J., delivered the opinion of the court:

On the 27th of October, 1878, the vault of the Manhattan Savings Institution in the city of New York was burglariously entered, and an iron safe therein was broken open, and from it were stolen and carried away a large number of bonds and other securities, representing a value of about two and a half million dollars; among which were sixteen United States five-twenty coupon bonds, consols of 1865, issued under the authority of the act of March 3, 1865, "to provide ways and means for the support of the Government" (13 Stat. L., 468, ch. 77). It does not appear that the officers or servants of the institution were guilty of any negligence in the care and custody of said bonds and securities.

The Secretary of the Treasury issued nine (J. R.) calls for five-twenty bonds for redemption, under the authority of the act of July 14, 1870, "to authorize the refunding of the national debt" (16 Stat. L., 272, ch. 256); in which calls were embraced all of said sixteen bonds. The first of the calls was dated July 30, 1878, and the last December 18, 1878, and each call matured three months after its date. The day of the maturity of the last call was therefore March 18, 1879.

Some weeks after this last date R. Raphael & Sons, bankers in London, purchased there six of these sixteen bonds; and thereafter in May, June, and July, 1879, purchased ten more; all of which they sold to the claimants, L. von Hoffman & Co., then doing business as bankers in New York. The former firm bought the bonds in London, in good faith, at their full market value, without any reason to suspect any infirmity in the title to them; and the latter firm took them in equal good faith, and paid R. Raphael & Sons the full market value of them, namely, par and accrued interest, without any reason to suspect any such infirmity. The first intimation to either of those firms of the bonds having been stolen, was given by the Treasury Department to L. von Hoffman & Co., when they sent to the Department the first lot of six of
27 the bonds and received therefrom information to that effect; and the same information was repeated as to the several succeeding lots, aggregating ten bonds, transmitted by them for redemption; and it was not until after the information was thus given to them, that it was imparted to R. Raphael & Sons. There is, therefore, not the least ground for imputing any wrong whatever in the transaction to either of those firms. The only question is as to the legal ownership of the bonds.

There can be no doubt that if R. Raphael & Sons or L. von Hoffman & Co. had purchased the bonds in good faith, for value, before the maturity of any call of the Secretary of the Treasury embracing them, they would be entitled to hold them against all the world. (Murray vs. Lardner, 2 Wallace, 110; Texas vs. White, 7 Ibid., 700.)

The only point in the case is, as to whether their purchase after the maturity of calls by that officer, changes L. von Hoffman & Co.'s legal rights. If those calls did not, in law, have the effect of making the bonds then due and payable, the Government cannot impeach or question the title of that firm, and must pay the amount of the bonds to them. If, on the other hand, the calls did have, in law, the effect of making the bonds due and payable at the maturity of the calls, then L. von Hoffman & Co. took overdue paper, subject to any and every defense which might be urged against their title.

The counsel for L. von Hoffman & Co. claim that to hold that the bonds became due and payable at the maturity of the calls, is to hold that thereafter they ceased to be negotiable. We do not concur in this view. Negotiable is a term applied to any contract, the right of action on which is capable of being transferred by endorsement and delivery, or by delivery alone, and the transfer of which vests in the holder a right to sue thereon in his own name. These bonds were payable to bearer, and were therefore transferable by delivery, and therefore were, without dispute, negotiable in the legal acceptation of the word, at any time before they became due and payable. Were they not equally negotiable after that time? In our opinion, it cannot be questioned that they were. We know of no rule of law which terminates the transferability of negotiable paper on the day it becomes due and payable. Least of all, is there any such rule in regard to Government bonds payable to bearer. They are just as negotiable after maturity as before; but with different results in the two cases as to the legal rights of the holder. He that takes them in good faith before their maturity, takes them with an unimpeachable title; but the title of him who takes them after maturity may be impeached.

To avoid the necessary effect of this doctrine, the counsel of L. von Hoffman & Co. takes the position that the time of the maturity of these bonds is that fixed on their face for their payment by the United States, namely, the first day of July, 1885, and that until after that day they continued fully negotiable, with all the protection accorded by the law-merchant to negotiable paper. And as a necessary corollary from this position he goes further, and contends that the calls of the Secretary of the Treasury for these bonds for redemption, and the non-redemption of the bonds at or after the time when they might have been presented for redemption, did not make them then overdue in the sense of being dishonored; and that unless they were overdue in that sense, L. von Hoffman & Co.'s title to them, acquired after the maturity of the several calls, cannot be impeached. Upon the soundness of these positions depends the right of L. von Hoffman & Co. to these bonds. We have considered the positions with all the respect due to the able counsel, and are not able to sustain them, for reasons now to be stated.

28 The fundamental error in his position is in overlooking the very terms of the bonds themselves, which make a broad line of distinction between them and ordinary commercial paper. The latter has al-

ways a time of payment fixed by its own terms, and it is dishonored only when the promisor fails to pay at that time. But on the face of these bonds the Government, while fixing a day of payment, reserves to itself the right to pay before that day; and the question here is as to the effect of that reservation. To answer this question we must look not to the law-merchant, but to the statute law authorizing the issue of the bonds. They could have had no existence except by statutory authority; the reserved right to pay before the fixed day of payment could be stipulated for only in pursuance of statute; and to the statutes we must resort to determine the effects, direct and remote, of that reservation.

By the act of March 3, 1865, under which these bonds were issued, it was enacted as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized to borrow, from time to time, on the credit of the United States, * * * any sums not exceeding in the aggregate six hundred millions of dollars, and to issue therefor bonds or Treasury notes of the United States, in such form as he may prescribe; and so much thereof as may be issued in bonds * * * may be made payable at any period not more than forty years from date of issue, or may be made redeemable, at the pleasure of the Government, at or after any period not less than five years nor more than forty years from date, or may be made redeemable and payable as aforesaid, as may be expressed on their face."

This provision expresses what the contract of the United States should be with parties from whom money should be borrowed; it formed, to every intent, a part of every bond issued under its authority, and it was notice to all the world that the Government reserved the right, at its own pleasure, to redeem the bonds issued under its authority, at and after such time as the Secretary of the Treasury might fix for their redemption after the lapse of five years from their date.

The bonds in this case express on their face that they are payable on the first day of July, 1885; but they also express that they are "redeemable at the pleasure of the United States after the first day of July, 1870." These terms of the contract were in exact conformity with the statute.

What is the signification of the word redeemable there? It simply expresses the right of the United States to buy and receive back the bond, by paying the full amount of it before the fixed day of payment. He who took one of those bonds took it with full notice on its face that that right existed, and also with reference on its face to the act of Congress authorizing the bond to be so shaped. By so taking it he agreed that that right might be exercised by the United States at their own pleasure at any time after the first day of July, 1870.

What is the meaning of the words "at the pleasure of the United States"? Did they refer merely to the "time" when that pleasure might be exercised? We think not. It seems to us quite clear that the pleasure might be exercised, not only as to the time when, but also as to the place where and the terms on which the bonds might be redeemed, and the legal effect which should attend their redemption. No other view appears to us consistent with the rights of the United States, whether considered as a contracting party or as a sovereign.

Of course, the United States could indicate its pleasure only by an act of Congress. Notwithstanding the language of the bonds, there could be

no right in any Department or officer, after the expiration of the five
29 years, to redeem one of them without express authority conferred by such an act. This conveyed notice to every holder of a bond that further legislation must be had before the bond could be so redeemed, and it also conveyed notice to him that he took the bond subject to the pleasure of the United States as to the character, scope, and effect of such legislation.

Such being the attitudes of the parties toward each other in relation to the bonds, the Congress declared the pleasure of the United States as to the exercise of the reserved right of redemption by the following provision in the above-cited act of July 14, 1870:

"The Secretary of the Treasury is hereby authorized * * * to pay at par and cancel any six per cent. bonds of the United States of the kind known as five-twenty bonds, which have become, or shall hereafter become, redeemable by the terms of their issue. But the particular bonds so to be paid and cancelled shall in all cases be indicated and specified by class, date, and number, in the order of their numbers and issue, beginning with the first numbered and issued, in public notice to be given by the Secretary of the Treasury, and in three months after the date of such public notice the interest on the bonds so selected and advertised to be paid shall cease."

In this provision the following things appear: 1. That it refers to bonds which had become, or should thereafter become, redeemable by the terms of their issue; 2. That the redemption of them should be effected by their payment at par; 3. That the payment should be made by the Secretary of the Treasury; 4. That the Secretary should give public notice, indicating and specifying by class, date, and number the particular bonds to be at any time redeemed; and 5. That in three months after the date of such public notice the interest on the bonds selected and advertised by the Secretary to be redeemed should cease. Such was the form in which the United States saw fit to signify their pleasure as to the redemption of the bonds of which these sixteen were a part. That law instantly on its passage became, in legal effect, a part of every bond which expressed on its face that it was redeemable at the pleasure of the United States. Every holder of such a bond, at and after the date of that enactment, held it subject absolutely thereto, and to all legal results flowing from the operation thereof.

And now we come to the question whether a public notice—ordinarily termed a call—given by the Secretary of the Treasury, that the principal and accrued interest of designated bonds would be paid on and after a certain day, and that the interest on such bonds would cease on that day, had the legal effect of bringing the bonds to maturity on the specified day of payment? If it did have that effect, then L. von Hoffman & Co. bought—not dishonored, but—overdue bonds, which remained in the market, not because the Government had failed to pay them, but because the holders had failed to present them for payment at the time named by the Government for their presentation for that purpose. L. von Hoffman & Co. contend that these bonds were not brought to maturity by those calls, but could be considered as matured only on the first day of July, 1885; and that, therefore, they took a title not subject to be impeached.

In considering this position the first point to be settled is the meaning of the maturity of a negotiable instrument. There can be but one answer to this—that the time of maturity is the time when the instrument becomes due and payable; that is, when the holder of it is entitled to demand, and the maker of it is bound to pay, all that is due upon it.

Ordinarily, the time of maturity is fixed by the terms of the instrument, and in such case neither party to it can, by his own separate act, change the time. The holder cannot demand payment before the fixed day, nor can the maker compel the holder to receive payment before that day. This is so because the contract is to be enforced and fulfilled in strict accordance with its terms. Had these bonds been simply payable on the first day of July, 1885, the United States could not have required the holder of them, under penalty of the stoppage of interest, to receive payment before that day, and therefore they could never before then have been brought to maturity.

But that is not this case. The bonds in question, we repeat, bore on their face the declaration of the right of the United States to redeem them after the first day of July, 1870, and that right was reserved to the United States by the act under which the bonds were issued, and was, in every view, of the very essence of the contract. The subsequent act of July 14, 1870, prescribed how that right should be exercised.

Now, when that right was exercised in conformity with that act, we are unable to perceive why it did not bring these bonds to maturity, each one at the end of three months after the date of the call embracing it, when the holder of it would be entitled to receive the principal of it and accrued interest. This is no more nor less than just what he would be entitled to on any day of payment fixed in the bond. To contend, therefore, that the bond did not mature on the day specified in the Secretary's notice for its full payment seems to us to be wholly without justification. We therefore hold that each of the bonds in question did, in law, become matured on the day when the holder of it had the right, in pursuance of the Secretary's call, to receive payment of all then due on it; and that whoever bought them after that day took them as overdue paper, with only such title as his vendor had, and liable to have his title to them disputed and impeached.

There is in this ruling no hardship on L. von Hoffman & Co. which they did not knowingly bring upon themselves. They knew that these were "called bonds," and they bought them as such. If, when they bought them, they believed that they had not matured, and would not mature until the first day of July, 1885, why should they have transmitted them, as they did instantly, to the Treasury Department for redemption? They bought them at par and accrued interest, at a time when it was a notorious public fact, of which we are entitled to take judicial notice, that in every money market in the world where United States bonds were bought and sold these bonds, if payable only in 1885, would have commanded a considerable premium. Why did they not, by a sale of them, realize the profit of the premium? The answer is very simple and inevitable. They knew that the bonds were due and payable; that they had, in eyes of all dealers in such securities, reached their maturity; that they had no market value, except, as representing the right to receive the principal of them and accrued interest; and they lost no time in seeking to obtain from the Treasury just that amount, and asked no more.

From all this it follows, as it seems to us, that L. von Hoffman & Co. acquired, as against the Manhattan Savings Institution, no title to these stolen bonds, and that the institution has still the title to them, wholly unimpaired by the fact of their having been stolen.

At the argument much was said on both sides in regard to the alterations of the numbers of five of the bonds. We have not noticed that subject because, as between these contending claimants, the alterations have no bearing on the question of title. If the bonds were annulled by the alterations, then neither claimant is entitled to recover on them. Neither, therefore, can attempt to overthrow the other's right of re-
31 covery, because of the alterations, without thereby overthrowing his own right. It is only the Government that could set up the alterations as a defense, and it has not done so. On the contrary, it stands ready to pay the altered bonds whenever the rightful ownership of them is judicially determined; and it is to obtain such determination that the whole controversy was remitted to this court by the Secretary of the Treasury.

The decision of the court is, that the petition of L. von Hoffman & Co. be dismissed; and that judgment be entered in favor of the Manhattan Savings Institution for the principal of the sixteen bonds, $13,000, and for the aggregated interest accrued on them up to the maturity of the several calls made by the Secretary of the Treasury, as shown in the tabulated statement in Finding V, amounting together to $13,229.28.

VIII.—*Final judgment of the court in the case of L. von Hoffman and Co.*

At a Court of Claims held in the city of Washington on the 16th day of April, A. D. 1883, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimants, L. von Hoffman and Company, be dismissed.

32 IX.—*Final judgment in the case of the Manhattan Savings Institution of New York.*

At a Court of Claims held in the city of Washington on the 16th day of April, A. D. 1883, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said The Manhattan Savings Institution of New York do have and recover of and from the United States the sum of thirteen thousand two hundred and twenty-nine dollars and twenty-eight cents ($13,229.28).

33 X.—*Application of L. von Hoffman and Co. for, and allowance of, appeal.*

L. VON HOFFMAN AND COMPANY VS. THE UNITED STATES; ALSO THE MANHATTAN SAVINGS INSTITUTION VS. THE UNITED STATES.

From the judgment rendered in the above-entitled case of L. von Hoffman and Company vs. The United States, on the 16th day of April, 1883,

in favor of the defendants, dismissing the petition of the said claimants, L. von Hoffman and Co.; and also from the judgment rendered in the above-entitled cause of The Manhattan Savings Institution vs. The United States, on the said day, in favor of the said The Manhattan Savings Institution, the said claimants, L. von Hoffman and Co., by their attorney, on the 15th day of June, 1883, make application for and give notice of an appeal to the Supreme Court of the United States.

J. HUBLEY ASHTON,
Attorney for L. von Hoffman and Co.

Filed June 15, 1883.

AT CHAMBERS, *June* 15, 1883.

Allowed.

C. D. DRAKE,
Chief Justice.

34 XI.—*Application of defendants for an appeal from the judgment in the case of The Manhattan Savings Institution and allowance of same.*

L. VON HOFFMAN AND CO. VS. THE UNITED STATES; ALSO THE MANHATTAN SAVINGS INSTITUTION VS. THE UNITED STATES.

From the judgment rendered in the above-entitled case of the Manhattan Savings Institution vs. The United States, on the 16th day of April, 1883, in favor of the said The Manhattan Savings Institution, the defendants, by their Attorney-General, on the 15th day of June, 1883, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed June 15, 1883.

AT CHAMBERS, *June* 15, 1883.

Allowed.

C. D. DRAKE,
Chief Justice.

35 In the Court of Claims. December term, 1882.

L. VON HOFFMAN AND COMPANY
vs.
THE UNITED STATES. } No. 12272.

ALSO

THE MANHATTAN SAVINGS INSTITUTION
vs.
THE UNITED STATES. } No. 12272.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled causes, of the findings of fact and conclusion of law thereon, of

the opinion of the court, of the final judgment of the court in each of the aforesaid causes, of the application of L. von Hoffman and Company, claimants, for an allowance of appeal to the Supreme Court of the United States, of the application of the United States, defendants, for allowance of appeal to said Supreme Court in the case of the Manhattan Savings Institution, and of the allowance of each of said appeals by Chief Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington City, this 28 day of June, A. D. 1883.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 528. Louis A. von Hoffman and William Mertens, copartners as L. von Hoffman & Company, appellants, vs. The United States. No. 529. The United States, appellant, vs. The Manhattan Savings Institution. Court of Claims. Filed 7th July, 1883.

113-476

Supreme Court of the United States

OCTOBER TERM 1884.

No. 526.

J. S. MORGAN & CO., Appellants, vs. THE UNITED STATES.

No. 527.

THE UNITED STATES, Appellant, vs. THE MANHATTAN SAVINGS INSTITUTION.

No. 528.

L. VON HOFFMAN & CO., Appellants, vs. THE UNITED STATES.

No. 529.

THE UNITED STATES, Appellant, vs. THE MANHATTAN SAVINGS INSTITUTION.

APPEALS FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANTS.

J. HUBLEY ASHTON,
Of Counsel.

THOMAS MCGILL & CO., Law Printers, Washington, D. C.

Supreme Court of the United States.

October Term 1884.

No. 526.—J. S. Morgan & Co., Appellants, *vs.* United States.

No. 527.—United States, Appellant, *vs.* The Manhattan Savings Institution.

No. 528.—L. Von Hoffman & Co., Appellants, *vs.* United States.

No. 529.—United States, Appellant, *vs.* The Manhattan Savings Institution.

Appeals from the Court of Claims.

BRIEF FOR APPELLANTS.

Statement.

These cases involve the question of the title of certain "called" 5-20 bonds of the Act of March 3d, 1865, consols of 1865, purchased by appellants, J. S. Morgan & Co. of London, and L. Von Hoffman & Co. of New York, respectively, in 1879, and transmitted to the Treasury for redemption under the Refunding Act of July 14th, 1870.

They belong to a class of cases referred to the Court below by the Secretary of the Treasury, under section 1063 of the Revised Statutes.

The bonds were stolen, with other securities, on October 27th, 1878, from the Manhattan Savings Institution of New York. (Record, Nos. 526, 527, p. 12.)

After they were stolen, and before they reappeared, in London, the serial numbers of some of them were altered. When, where, or by whom the alterations were made, does not appear; but there was nothing in the appearance of the bonds, or the numbers thereof, when the bonds were purchased, calculated to excite the suspicion or notice of a prudent and careful man; and the alterations of the numbers were so skillfully effected that they were only discoverable with the aid of a magnifying glass. (Finding VII, Record, Nos. 526, 527, p. 14; Finding VII, Record, Nos. 528, 529, p. 14.)

The bonds purchased by J. S. Morgan & Co., in London, are twenty (20) in number—ten (10) for $500 each and ten (10) for $1000 each—amounting to $15,000. (Record, Nos. 526, 527, p. 13.) The numbers of four (4) of them were altered, as above mentioned. (Ib., p. 14.)

The bonds purchased by L. Von Hoffman & Co., in London, are sixteen (16) in number—six (6) for $500 each and ten (10) for $1000 each—amounting to $13,000. (Record, Nos. 528, 529, p. 13.) The numbers of five of them were altered, as above stated. (Ib., p. 14.)

The bonds, involved in both cases, were purchased, in London, in 1879, after they had been "called" by the Secretary of the Treasury for redemption, under the Refunding Act of July 14th, 1870, and, when purchased, the "call" in each case had "matured." (Record, Nos. 526, 527, p. 17, Finding XII; Record, Nos. 528, 529, p. 14, Finding VIII.)

It does not appear that any notice of the loss of the bonds was sent to appellants by the Manhattan Bank. (Finding VI, Rec., Nos. 526, 527, p. 14.)

The general facts in regard to the character of the purchases as in good faith, for full value, and without notice

of any defect in the title of the persons from whom they were received, are the same in both cases.

The only difference between the cases is, that the bonds which are the subject of the suit in the case of J. S. Morgan & Co. were purchased, by them, under their syndicate contract of January 21st, 1879, with the Secretary of the Treasury, for the negotiation of 4 per cent. bonds, and for the purpose of making payment to the United States for 4 per cent. bonds subscribed for under that contract, or provided for therein, and to avoid the transmission of *gold* to settle their accounts with the Treasury Department, and were received, by the London Agent, Mr. Conant, after examination, in payment for 4 per cent. bonds delivered to J. S. Morgan & Co. by him; and after being perforated and cancelled by Mr. Conant, were transmitted by him, under the contract of January 21st, 1879, from London, to the Treasury Department for redemption. (Record, Nos. 526, 527, p. 18, Findings XIII, XIV.)

That contract (which was one of a series of similar contracts made by the Secretary of the Treasury from July, 1874, to January, 1879, for the negotiation of the 5, 4½, and 4 per cent. bonds, in Europe and this country, with associations of bankers, in London and this country, known as "syndicates,") expressly provided that the parties thereto should pay to the Secretary of the Treasury the amount of 4 per cent. bonds, subscribed for, at par and accrued interest, in United States gold coin, United States matured coin coupons, coin certificates of deposit, *or United States 6 per cent. 5-20 bonds called for redemption not later than the date of subscription to which the payment applied.* (Rec., Nos. 526, 527, pp. 15–17, Finding XI.)

The Court of Claims finds, in regard to the purchase of their bonds, by J. S. Morgan & Co., as follows:

"They bought them in the due course of business of well-known and responsible parties in London, and paid the full market price for them, *to wit*, par and accrued in-

terest, in good faith, without having any reason whatever to suspect that the bonds, or any of them, had been stolen or wrongfully obtained by any person, or that there was any defect in the titles of the persons from whom the purchases were made, or that the numbers of any of the bonds had been changed, or that the numbers on the bonds were not the original and genuine numbers as issued by the Treasury Department of the United States." (Rec., Nos. 526, 527, pp. 17, 18, Finding XII.)

The sixteen (16) bonds, involved in the case of L. Von Hoffman & Co., were first purchased, in 1879, in London, by a firm of bankers styled R. Raphael & Sons, having high respectability and standing in London and elsewhere, who did a very large business in United States Government securities.

The Court of Claims finds, in regard to the purchase of these bonds by R. Raphael & Sons, as follows:

"They bought them of well-known and responsible parties in London, and paid the full market value of them, *to wit*, par and accrued interest, without having any reason whatever to suspect that the bonds, or any of them, had been stolen or wrongfully obtained by any person, or that there was any defect in the titles of the persons from whom the purchases were made, or that the numbers of any of the bonds had been changed, or that the numbers on the bonds were not their original and genuine numbers, as issued by the Treasury Department of the United States." (Rec., Nos. 528, 529, p. 14, Finding VIII.)

The bonds thus purchased, by R. Raphael & Sons, were sold by them to L. Von Hoffman & Co., and sent to the latter in the same condition as when R. Raphael & Sons bought them, and they were received by L. Von Hoffman & Co. in the same condition as when they were sent by R. Raphael & Sons. (Rec., Ibid., p. 15, Finding IX.)

L. Von Hoffman & Co., on the receipt of the bonds, transmitted them to the Treasury Department for redemption. (Ibid.)

The Court of Claims finds, in regard to the purchase of the bonds by L. Von Hoffman & Co., as follows:

"L. Von Hoffman & Co. paid R. Raphael & Sons the full market price for them, *to wit*, par and accrued interest, in good faith, without having any reason whatever to suspect that the bonds, or any of them, had been stolen or wrongfully obtained by any person, or that there was any defect in the title to the bonds, or that the numbers of any of the bonds had been changed, or that the numbers on the bonds were not the original and genuine numbers, as issued by the Treasury Department of the United States." (Rec., Nos. 528, 529, p. 15, Finding IX.)

The Court of Claims has also made the following findings:

"VIII. During the period of the refunding transactions under the Act of July 14th, 1870, many five-twenty bonds of every call were not sent in promptly for redemption, but were held, in this country and Europe, through want of information, or otherwise, until long after the maturity of the call.

"IX. During the period of the refunding transactions of the Government under the Act of July 14th, 1870, large numbers of the European holders of the five-twenty bonds, of the Act of March 3d, 1865, called for redemption, from want of facility for sending their bonds to the United States, or to avoid the risk and expense of transmission, or various other reasons, were obliged to and did sell and dispose of their bonds, in the market, in London, to money-changers, bankers, and merchants, as the only means of obtaining the money for them. Many millions of the said called bonds were thus sold and disposed of in the London market, and dealt in by money dealers during that period, long after the maturity of the various calls.

"X. According to the custom and practice in London, the said called bonds of the United States were commonly dealt in, by buying and selling, after the time fixed for their redemption, in the same way and just as freely as the bonds not called for redemption" (Rec., Nos. 526, 527, p. 14.)

The bonds so purchased, by these parties, having been claimed as the lawful property of the Manhattan Savings Institution, the Secretary of the Treasury referred the question of the conflicting rights of the claimants to the Court of Claims, under section 1063 of the Revised Statutes. (Rec., Nos. 526, 527, p. 21; Rec., Nos. 528, 529, p. 17.)

In the cases of *J. S. Morgan & Co.* v. *United States* and *The Manhattan Savings Institution* v. *United States*, the Court dismissed the petition of J. S. Morgan & Co., and gave judgment in favor of the Manhattan Savings Institution for the amount of the bonds, claimed in those cases, and accrued interest, *viz.*, $15,284.53. (Rec., Nos. 526, 527, p. 27.)

From these judgments J. S. Morgan & Co. and the United States have both appealed. (Ib., p. 28.)

In the cases of *L. Von Hoffman & Co.* v. *United States* and *The Manhattan Savings Institution* v. *United States*, the Court below dismissed the petition of L. Von Hoffman & Co., and gave judgment in favor of the Manhattan Savings Institution for the amount of the bonds, claimed in those cases, and accrued interest, *viz.*, $13,229.28. (Rec., Nos. 528, 529, p. 23.)

From these judgments L. Von Hoffman & Co. and the United States have both appealed. (Ib., p. 24.)

Assignment of Errors.

The Court below erred in the cases of *J. S. Morgan & Co.* v. *United States* and *The Manhattan Savings Institution* v. *United States*, as follows:

1. In dismissing the petition of J. S. Morgan & Co.

2. In not rendering judgment in their favor for the amount of the bonds claimed by them, and accrued interest.

3. In giving judgment in favor of the Manhattan Sav-

ings Institution for the amount of the said bonds, and accrued interest.

The Court below erred in the cases of *L. Von Hoffman & Co.* v. *United States* and *The Manhattan Savings Institution* v. *United States*, as follows:

1. In dismissing the petition of L. Von Hoffman & Co.

2. In not rendering judgment in their favor for the amount of the bonds claimed by them, and accrued interest.

3. In giving judgment in favor of the Manhattan Savings Institution for the amount of said bonds, and accrued interest.

ARGUMENT FOR APPELLANTS.

First.

Before discussing the questions presented by the records, it may be important to refer to some general and pertinent facts in regard to the National debt and the operations of the Government under the Refunding Act of July 14th, 1870.

1. The 5.20 bonds issued under the Acts of March 3d, 1865, (13 Stats., 468,) and April 12th, 1866, (14 Ib., 31,) in four classes, amounted to $958,483,550. (Finance Report 1869, p. 17.)

On March 1st, 1871, the nearest date prior to the commencement of operations under the Refunding Act of 1870, the following amounts of 6 per cent. 5-20 bonds were outstanding:

Five-twenties of 1862...		$493,738,350
Five-twenties of March, 1864		3,102,660
Five-twenties of June, 1864		102,028,900
Act March 3, 1865.	Five-twenties of 1865	182,112,450
	Consols of 1865	264,619,700
	Consols of 1867	338,832,550
	Consols of 1868	39,663,750

("*The National Loans of the United States.*" By Bayley. Washington, 1882, p. 94.)

Large amounts of the 5-20 bonds of the Act of 1865 were held in Europe during the period of the refunding operations. ("*Specie Resumption and Refunding of National Debt*," House Ex. Doc. No. 9, 46th Cong., 2d Sess., pp. 214, 353, 545; *Finance Report*, 1878, p. 18; Same, 1879, p. 15.)

One of the great problems, therefore, for the Secretary of the Treasury, under the Act of 1870, was how to meet the 5-20 bonds held abroad, when "called," without the transfer of gold, in large quantities, from this country to Europe.

It was equally important that there should be no disturbance of the gold market by the transfer of specie from Europe in payment for the lower interest bonds which it was desirable to place there.

This problem was solved by treating the "*called*" 5.20 bonds as MONEY under the Refunding Act. (Mr. Sherman to Messrs. Belmont & Co., "*Specie Resumption*," &c., *supra*, p. 516.)

The Secretary accordingly authorized the payment of subscriptions for the lower interest bonds to be made in "called" 5-20 bonds on the same footing with gold coin. (Rec., Nos. 526, 527, p. 15.)

A vast market was, of course, thus created for the "called" bonds, large numbers of which were held in this country and Europe, until long after the maturity of the calls. (Rec., Ib., p. 14; Finding VIII.)

The "called" bonds were purchased from holders, and delivered to the Government, as money, by subscribers for the 5, 4½, and 4 per cent. bonds. (Rec., Ib., p. 15.) The result was, that the holders of the "called" bonds received the money for their bonds, when they chose to sell them, at their own doors, as it were, without the risk and expense of forwarding their bonds to Washington; no gold was shipped abroad, or paid out by the Treasury; the Government was able to save the gold for resumption of specie

payments; and the lower interest bonds were placed in Europe without the transfer of specie to this country, or any disturbance of the money market.

2. There can be no doubt, we think, in the mind of any student of the history of these remarkable operations, as contained in the *Executive Document*, above cited, that except for the negotiability—the credit and currency—of the "called" 5-20 bonds, as representatives of money, in the markets of the world, the great war debt could not have been refunded under the Act of 1870, and specie payments could not have been resumed under the Act of January 14th, 1875, (18 Stats., 296.)

SECOND.

The legal presumption is that it was not intended by Congress that the 5-20 bonds should be robbed of any of their privileges and immunities, as part of the commercial currency of the country and the world, after the so-called maturity of the "calls."

1. The value due to the negotiable character of commercial paper as the representative of money, should not be impaired by any new rules tending to lessen its currency and credit. (Swift *v.* Tyson, 16 Pet., 20; Cromwell *v.* Sac County, 96 U. S., 59; County of Warren *v.* Marcy, 97 U. S., 108; Bank *v.* Kirby, 108 Mass., 502.)

2. A rule that would convert the public securities of the United States, in effect, into *ordinary chattels*, after calls for redemption, would be a positive injury to the Government and the people of the country.

It would render those securities less desirable for purposes of investment, and drive them home to the Treasury for redemption at the earliest possible date.

It is not supposable that Congress intended that any rule of negotiability should be applied to the public bonds of

the United States that would, in any manner, at any time, interfere with the operations of the Government, as a borrower, in the money markets of the world.

3. An *ex post facto* doctrine that would turn the 5.20 bonds into mere chattels, in the hands of holders, the world over, the instant the "calls" matured, (as the phrase is,) would be little short of substantial repudiation.

The value of those bonds depended largely on their negotiable character, according to the policy of the Law Merchant, and the length of time during which it was supposed they would have credit and currency, as money, in the markets of the world; and the Government received the consideration for that in the price it obtained for them.

The presumption, therefore, is that Congress did not intend that the credit and currency of the bonds, as securities for money, should be impaired or impeded, to the least extent, in the money markets of the world, by the "calls" for redemption.

4. The principle here contended for was applied by Judge Black, as Attorney-General, in determining the question of the negotiability of the interest-bearing Treasury notes issued under the Act of December 23, 1857, (11 Stats., 257,) after the maturity of the notice, or call, for the redemption of those notes provided for by that Act.

By the Act of 1857 the notes were redeemable *after* one year from their dates, and it was provided that *interest* should cease after their maturity "at the expiration of sixty days' notice of readiness to pay and redeem the same."

Judge Black held that the rule of *caveat emptor* did not apply to them after maturity. He said:

"It is evidently the intention of this Act to make Treasury notes a *continuing security*. The negotiation of them after maturity is therefore not an unusual circumstance. It certainly can create no doubt of the holder's title that he retains a good security, bearing interest, as long as pos-

sible, and that, when compelled to part with it, he sells it to a banker at his place of residence rather than perform a journey to Washington to present it himself.

To hold that Treasury notes, when transferred after maturity, are subject to equities between previous parties, would, to some extent, defeat the object of the laws under which such notes are issued. It would make them less desirable as an investment. It would diminish the demand for them, and so diminish the amount of loans that could be procured for them. It would impair their negotiability after maturity and drive them home to the Treasury for redemption at the earliest possible date. These results are so clearly inconsistent with the general intent of the law, that a construction which leads to them cannot be sound."

5. The Court should not disregard and overrule, unless absolutely necessary, the interpretation and effect given to the legislation in regard to the 5-20 bonds, by the custom and usage of the money market, in 1879, whereby they were commonly dealt in by buying and selling, after the interest ceased, under the "calls," in the same manner and just as freely as before they were called for redemption. (Finding X, Record, Nos. 526, 527, p. 14.)

THIRD.

The reason of the rule of the Law Merchant which subjects ordinary commercial paper transferred after maturity to prior equities, has no application to the 5-20 bonds negotiated after the date when the interest ceased under the "calls."

1. The reason of the rule that the fact that a bill or note is overdue is equivalent to notice of all facts relating to it, is clearly stated in *Ayres* v. *Hutchins*, (4 Mass., 371,) as follows:

"A note endorsed some time after it is due furnishes *a presumption that it has been dishonored;* because it may reasonably be inferred that the holder of the note would prefer receiving the money due, if payment could be had, to a negotiation of the note."

The same reason for the rule is given by Ashhurst, J., and Buller, J., in the leading case of *Brown* v. *Davies*, (3 T. R., 89,) in which, it is well known, Lord Kenyon dissented from the doctrine.

2. But so far from the negotiation of the "called" 5.20 bonds, in the year 1879, after the interest ceased, being a circumstance of suspicion, or an unusual circumstance, or out of the common course of dealing, it was a matter of every-day occurrence in every money market in the world.

So common and frequent were transactions in the negotiation of the called 5-20 bonds, in London, after the so-called maturity of the "calls," that a custom and usage existed in regard to those bonds, whereby they were bought and sold, after the time fixed for their redemption, in the same way, and just as freely, as the bonds not called for redemption.

FOURTH.

By the general principles of the Law Merchant the 5-20 *bonds outstanding after the "calls" for redemption, cannot be deemed "overdue," in the sense that would affect their purchasers with notice of all facts relating to them, before the expiration of the time expressed, on their face, for their payment by the Government.*

1. By the principles of the general Law Merchant the title and possession of negotiable paper are deemed inseparable until after *dishonor*, which Mr. Parsons rightly prefers to the more usual phrase "after maturity;" for dishonor and non-payment at maturity, he shows, are not necessarily the same thing. (1 Parsons, Notes and Bills, p. 261.)

The dishonor, however, which deprives such paper of its peculiar privileges under the Law Merchant, is dishonor apparent on the *face* of the paper; so that where the paper

is payable, by its face, at a certain time, non-payment cannot operate dishonor until the paper is *overdue on its face;* and until then a purchaser is warranted in giving it full faith and credit according to its tenor, and is not bound to inquire into its previous history. (Brown *v.* Davies, 3 T. R., 82; Wheeler *v.* Guild, 20 Pick., 545.) The rule was precisely expressed by Chief Justice Taney in *Andrews* v. *Pond*, (13 Pet., 79,) as follows: "Now a person who takes a bill, which *upon the face of it* was dishonored, cannot be allowed to claim the privileges which belong to a *bona fide* holder without notice."

2. The decision of this Court in *Vermilye* v. *Express Co.* (21 Wall., 145,) is distinct authority for the proposition that these 5-20 bonds outstanding and unpaid, after interest ceased on them, cannot be deemed overdue, in the sense of the rule as to dishonored paper, until after the time when ~~expressed~~ they are to be payable on their face. expressed

The seven-thirty notes in the *Vermilye* case were dated June 15th and July 15th, 1865, and were promises to pay $1000 each, *three years after date.* They thus matured, by their *face*, June 15th and July 15th, 1868. They were stolen in May, 1868; and on May 29th and June 5th, 1868, *notices, with full descriptions of the notes*, were served on Vermilye & Co., who bought the notes in April, 1869, thus not only long after the notes were overdue, by their face, but in spite of the notices that they were stolen property.

The grounds of the decision were *both* the overdue character of the notes, on their face, and the disregard, by the purchasers, of the express notice of the larceny of the notes. The Court held that purchasers of such obligations, after the expiration of the time expressed on their face for their payment by the United States, were bound to consult any previous notices received of the loss of the securities, and, failing to do so, they could not be deemed *bona-fide* purchasers without notice.

On the question of the overdue character of the notes when purchased, the Court decided that they were then overdue because the time when they were absolutely payable had then passed, and they were unpaid, and they carried notice of this fact on their *face*, thus distinctly affirming the doctrine with respect to such obligations, expressed on their face to be payable absolutely at a fixed future time, that they do not become overdue and dishonored until the time so expressed for their payment has transpired.

FIFTH.

It is clear, by the express terms of the bonds, as issued under the Act of 1865, *that it was intended that they should have credit and currency, as the representatives of money, in the market, after interest should cease under "calls" for redemption, and until, at least, the expiration of the time expressed, on their face, for their payment by the United States.*

1. The bonds, on their face, import an express promise to pay the "*bearer*" the amount named *on* the 1st day of July, 1885. Where a writing imports not only the acknowledgment of a debt, but an agreement to pay it, this amounts to an *express* promise. (Smith *v.* Allen, 5 Day, 337.)

Every "*bearer*" is an original payee, as being within the description in the bonds themselves of the original payee, and takes his title under the original promise of the maker. (Thompson *v.* Perrine, 106 U. S., 593; Comm. *v.* Savings Bank, 98 Mass., 18.)

Whoever gives a note payable to "bearer," at a day named, expressly promises and agrees to pay it to every *fair* bearer—to any and every person who successively holds it *bona fide*—at or before the time it becomes due. (Grant *v.* Vaughan, 3 Burr, 1516; Bank *v.* Wister, 2 Pet., 318, 326; Bullard *v.* Bell, 1 Mason, 251; Story Prom. Notes, sec. 191.)

It is clear, therefore, that by the very terms of the bonds, they were *expressly* made by the United States negotiable according to the principles of the Law Merchant until the 1st day of July, 1885.

2. It is obvious, on the face of the bonds, that the right of redemption before that date, reserved by the United States, was intended to have no significance or effect except in relation to the *interest*, which was a mere incident and not of the substance of the obligation, and that it was not intended to affect in any manner the negotiable character of of the bonds themselves, according to the principles of the Law Merchant, before the date fixed, on their face, for their payment by the United States.

It has been expressly and well decided that an ordinary promissory note payable by its terms, at the option of the maker, on or before a fixed future date, is to be regarded, for all purposes of negotiation, as a note payable *solely* on the day therein named. (Jordan *v.* Tate, 19 Ohio St., 586; see, also, Mattison *v.* Marks, 31 Mich., 422; Helmer *v.* Krolick, 36 Mich., 371; Bates *v.* Leclair, 49 Vt., 234.)

3. It has been expressly adjudged that a bond or note is not to be deemed overdue and dishonored from the fact that *interest* is overdue. (Bank *v.* Kirby, 108 Mass., 501; Cromwell *v.* County of Sac, 96 U. S., 51; Railway Co. *v.* Sprague, 108 U. S., 762.)

The doctrine is thus settled that interest was a mere incident of these bonds; and the stipulation in relation to it does not affect the contract expressed as to the principal.

SIXTH.

Coming now to the Refunding Act of July 14th, 1870, it is clear that the intention of that Act was to affect only the interest on the 5-20 bonds, as therein provided, and not to impair or affect any of the incidents and privileges of the

bonds as negotiable securities for money, under the Law Merchant, in the markets of the world, after the so-called maturity of the "calls," and before the time when they became payable by their face.

1. The Act of July 14th, 1870, (16 Stats., 272.) in its second section, authorized the Secretary of the Treasury to sell any of the 5, 4½, and 4 per cent. bonds, and apply the proceeds to the redemption of any of the outstanding 5-20 bonds at their par value, or *to exchange the same for such 5-20 bonds, par for par.*

The latter authority was interpreted, as we have seen, by Mr. Sherman as authority to treat the "*called*" 5-20 bonds as *money* under the Act, and to receive them as such in payment for the lower interest bonds in the refunding operations.

The third section of the Act provided for public notice by the Secretary of the time of the intended redemption of any of the 5-20 bonds, and then declared the substantial purpose of the Act in the following words:

"*And in three months after the date of such public notice, the interest on the bonds so selected and advertised to be paid shall cease.*"

These words declare the effect, and the whole effect, which it was intended by Congress that the Act should have with respect to the bonds after the expiration of three months from the date of the notices. The interest on the bonds is to cease after that time; and that is *all* that is to happen to them unless their holders choose to accept the anticipated payment offered by the notices by presenting them for redemption. There is nothing in the enactment in regard to the interest that can be construed as a declaration that after the so-called maturity of the notices, the bonds included in them, if not presented for redemption, should be transferable only as overdue and *dishonored* paper in the markets of the world.

So far, indeed, from Congress having intended to stamp the bonds as overdue and dishonored paper after the interest ceased, it is plain that, by confining the effect of the notices specifically and expressly to the *interest*, Congress distinctly manifested its intention that the bonds not presented for redemption should be and remain, after the interest ceased, *continuing securities* for money, in the money markets of the world, and fully negotiable as such according to the principles of the Law Merchant.

2. Congress knew that these bonds were held, in large amounts, in almost every civilized country, and by thousands who never would hear of the "calls" until after the interest on their bonds had ceased, and to whom the full and complete negotiability of the bonds, after that time, would be of the greatest importance, as enabling them readily to obtain the money for their securities when they wanted it, by negotiating the bonds, in the market, instead of incurring the risk and expense of sending them to the Treasury. And Congress knew that unless the bonds were freely negotiable, as commercial paper, everywhere, after, as well as before, the "calls" matured, their payment never could be effected, by the Government, without the use and transfer of gold, and the most serious disturbance of the money markets of America and Europe.

It is impossible to believe that, with this knowledge, Congress meant that the bonds should be treated as overdue and dishonored paper after the interest ceased under the calls for redemption.

3. The provision of section 2 of the Act of 1870, authorizing the Secretary *to exchange the lower interest bonds for the outstanding* 5-20 *bonds, par for par*, distinctly contemplated the complete negotiability of the called 5-20 bonds, outstanding after the interest on them ceased; for Congress must be assumed to have known that the authority could

not be effectively exercised, and would be of no value, in refunding operations, unless those bonds were subject to be treated as MONEY in the markets of the world.

SEVENTH.

There was nothing in the "calls," as formulated under the Act of 1870, *that treated the bonds as "overdue" after the day named in them for the interest on the bonds to cease, if not presented for redemption on that day.*

1. The "calls" are simply notices (described as *public* only because entered on the records of the Treasury Department) that the principal and accrued interest of certain designated 5-20 bonds, if presented, will be paid at the Treasury "ON AND AFTER" a day named, (three months from the date of the notice,) "*and that interest on said bonds will cease on that day.*" (See form of the "calls," Rec., Nos. 526, 527, p. 12.)

The opinion of the Court below erroneously assumes that there is a fixed day, named in the "calls," for the payment of the bonds; thus the learned Chief Justice speaks of the "*specified* day of payment," and of the "day *specified* in the Secretary's notice" for the full payment of the bonds, &c. But there is *no* fixed day specified in the calls for the payment of the bonds; though a day is specified on which the *interest* is to cease.

The notice is that the bonds will be paid "ON AND AFTER" the day named for the cessation of interest. The bonds are to be paid only on presentation at the Treasury for redemption, and they may be presented for redemption, at the option of the holders, at any time "*after*" the day named for the cessation of interest.

Unless and until presented for redemption there is no obligation, on the part of the United States, to pay them before the day when they became "*payable*" by the con-

tract expressed on the face of the bonds—that is to say, July 1st, 1885.

The bonds not presented for redemption under the calls, cannot be said, therefore, to be "overdue," in the sense of the general Law Merchant, after the day on which the interest ceased, in the hands of their respective holders.

Evidently, under the "calls," the bonds not presented for redemption are *continuing securities*, and upon the same footing as other negotiable paper before maturity.

A similar view was taken by Judge Black, as we have seen, of the negotiable character of the Treasury notes issued under the Act of December 23d, 1859, after maturity of the notice for the payment of those securities.

The Act provided that *interest* should cease at the expiration of sixty days from the notice of readiness to pay the same.

"*It was evidently the intention of this Act*," said Judge Black, "*to make the Treasury notes a continuing security.*" (9 Opinions, 415.)

2. The law in regard to ordinary commercial paper furnishes pertinent analogies which may be appropriately referred to in this connection.

In *Brooks* v. *Mitchell*, (9 Meeson & Welsby, 15,) it was held that notes payable on demand are intended to be continuing securities, and are not overdue or dishonored by lapse of time. It was urged, in that case, that the non-payment of interest for three years was sufficient to put the endorsee upon inquiry. But *Parke*, B., said:

"I cannot assent to the arguments urged in behalf of the plaintiffs. If a note payable on demand is after a certain time to be treated as overdue, although payment has not been demanded, it is no longer a negotiable instrument; but a promissory *note, payable on demand, is intended to be a continuing security.*" (See also Cripps *v.* Davis, 12 M. & W., 165; Tomlinson *v.* Kinsella, 31 Conn., 268.)

In *Bank of Fort Edward* v. *Washington County Bank*, (5 Hun., 605,) it was held that a certificate of deposit, "*payable on the return of this certificate properly indorsed*," is not dishonored until presented, and that the Bank was liable to a *bona-fide* holder of the certificate notwithstanding a payment to the original depositor. The Court say, in that case:

"It was urged that the certificate was payable forthwith; that after the lapse of an unreasonable time (in this case seven years) it was presumed to be dishonored, and therefore that the assignee took it subject to all equities. We think not. Such a certificate is not dishonored until presented."

It is held that bank notes and certificates of deposit are payable only after a demand; so the "called" 5-20 bonds were payable only after demand at the Treasury, and were, therefore, not *due*, or *overdue*, before their presentation at the Treasury for redemption. (See, as to bank-notes, Hinsdale *v.* Larned, 16 Mass., 68; certificates of deposit, Just *v.* Weedon, 18 Md., 320; Bank *v.* Bank, 40 Vt., 377.)

EIGHTH.

The usage of the money market, in 1879, *solves any question as to whether these* 5-20 *bonds not presented for redemption, should be considered negotiable, in the market, according to the principles and policy of the Law Merchant, after the interest had ceased, under the "calls," by treating them as such.*

1. The 8th, 9th, and 10th findings of the Court of Claims, in the case of *J. S. Morgan & Co.*, (Nos. 526, 527, Rec., p. 14,) and also the letter of J. S. Morgan & Co., (p. 20,) are referred to in connection with this proposition.

2. The usage of the money market is entitled to have legal effect as part of the law in regard to the 5-20 bonds,

and their character of negotiability, in 1879, after the interest on them had ceased under the calls.

Lord Chief Justice Holt, after the argument in *Butler* v. *Crips*, (6 Mod., 29,) which involved the question of the negotiability of promissory notes, before the Statute of 3 and 4 Anne, said "he had desired *to speak with two of the most famous merchants in London*, to be informed of the mighty ill consequences it was pretended would ensue by obstructing this course, and that they had *told* him it was very frequent with them to make such notes, and that they looked on them as bills of exchange."

In *Stone* v. *Rawlinson*, (Willes, 559,) as to the indorsement of a promissory note by the administrator of the payee, Chief Justice Willes said:

"As this is a matter which greatly concerns the trade and commerce of the nation, and as it has never been judicially determined before, we thought ourselves at liberty, and that it was the most proper method we could take, to inquire of traders and merchants of undoubted credit what has been the practice in this case ever since the Act of the third and fourth of Queen Anne, and how the Act has been understood by them. We have done so; and they all agree that it has been the constant practice for executors and administrators to indorse such notes and inland bills of exchange, and that promissory notes, when so assigned, have always been considered to be as much within the statute, and that they may be put in suit by the indorsees in the same manner as if they had been indorsed by the testator or intestate. As, therefore, we are fully satisfied that this has been the constant practice, and that the law has been always so understood amongst traders, and as the courts of law have always in mercantile affairs endeavored to adapt the rules of law to the course and method of trade in order to promote trade and commerce, instead of doing it any hurt, so we are determined in the present case to make this indorsement valid according to the practice, if we can by any means make it consistent with the words of the Act and agreeable to the rules of law, and we think it is easy to do both."

In England the body of the law as to the negotiability of Treasury bills, public bonds, and public scrip, is based upon commercial usage. (Exchequer bills, Wookey *v.* Pole, 4 B. & Ald., 1 [1820]; as to Prussian bonds, Gorgier *v.* Mieville, 3 Barn. & Cress., 45 [1824]; which were followed, as to Russian bonds, by Attorney-General *v.* Bouwens, 4 M. & W., 171; Spanish bonds, by Heseltine *v.* Siggers, 1 Ex., 856; and Russian and Austro-Hungarian scrip, by Goodwin *v.* Robarts, Law Reports, 10 Ex., 337.)

In *Gorgier* v. *Mieville*, (3 Barn. & Cress., 45,) where the negotiability of public bonds was first decided, the Court admitted proof, at the trial, that they were sold in the market like exchequer bills, and the case was decided on this proof alone.

In *Goodwin* v. *Robarts*, (L. R., 10 Ex., 337,) Lord Chief Justice Cockburn, in a judgment which traced the origin and history of negotiable instruments, said:

"The *usage of the money market* has solved the question whether scrip should be considered security for and the representative of money, *by treating it as such.*"

This Court has given the same effect to the usage of trade as determining the law of this class of securities. (Mercer Co. *v.* Hackett, 1 Wall., 95; Gelpeche *v.* Dubuque, 1 Wall., 206.)

Ninth.

The alterations in the numbers of some of the bonds involved in these cases do not avoid or affect them in the hands of the appellants, who took them in good faith for value, and without notice, express or implied, of the mutilation.

1. The Government only could set up the alterations as a defense, and it has not done so. That view was taken by the Court below, and is a correct one. (Opinion Drake, Ch. J., Rec., Nos. 526, 527, p. 27.)

2. The alteration of the numbers was not in the legal sense a material alteration of the bonds. (Commonwealth *v.* Emigrant Industrial Savings Bank, 98 Mass., 14–19; 2 Parsons, Bills and Notes, 544; Berdsall *v.* Russell, 29 N. Y., 239; City of Elizabeth *v.* Ford, 29 N. J. Eq., 591.)

3. But it is unimportant to consider the character of the alteration, for it is settled law in this country that an unlawful and unauthorized alteration of a negotiable instrument, payable to bearer, by a stranger, however material, cannot affect the rights of an innocent holder for value who has taken it in good faith. (See 1 Greenleaf Ev., sec. 566; 2 Daniel, Neg. Insts., p. 349; 2 Parsons, Bills and Notes, p. 574; United States *v.* Spaulding, 2 Mason, 482; City of Elizabeth *v.* Force, 29 N. J. Eq., 591.) The Court, in City of Elizabeth *v.* Force (*supra*), well say:

"The holder in good faith does not claim to be invested with any transmitted right; the bond being payable to bearer, he claims by force of the direct promise of the city made to himself. The consequence is that he can no more be affected by the act of the spoliator, in altering the instrument, for which he has honestly paid value, than can be any person holding a title antecedent to such alteration."

TENTH.

The judgments of the Court below should be reversed, and it should be directed to enter judgments in favor of the appellants, J. S. Morgan & Co. and L. Von Hoffman & Co., for the principal of the bonds claimed by them respectively, and accrued interest.

J. HUBLEY ASHTON,
Of Counsel for Appellants.

Supreme Court of the United States.

Nos. 526, 527, 528, and 529.

No. 526.

JUNIUS S. MORGAN and Others, Appellants, vs. THE UNITED STATES.

No. 527.

THE UNITED STATES, Appellant, vs. THE MANHATTAN SAVINGS INSTITUTION.

No. 528.

LOUIS A. VON HOFFMAN and Others, Appellants, vs. THE UNITED STATES.

No. 529.

THE UNITED STATES, Appellant, vs. THE MANHATTAN SAVINGS INSTITUTION.

BRIEF FOR MANHATTAN SAVINGS INSTITUTION.

HOWARD C. CADY,
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Of Counsel.

THOMAS MCGILL & CO., Law Printers, Washington, D. C.

Supreme Court of the United States.

Nos. 526, 527, 528, and 529.

No. 526.—JUNIUS S. MORGAN and others, Appellants, *vs.* THE UNITED STATES.

No. 527.—THE UNITED STATES, Appellant, *vs.* THE MANHATTAN SAVINGS INSTITUTION.

No. 528.—LOUIS A. VON HOFFMAN and others, *vs.* THE UNITED STATES.

No. 529.—THE UNITED STATES, Appellant, *vs.* THE MANHATTAN SAVINGS INSTITUTION.

STATEMENT.

March 3d, 1865, Congress passed an act that the Secretary of the Treasury be authorized to borrow certain sums of money, and to issue therefor bonds in such form as he might prescribe; and that such bonds might be made payable at any period not more than forty years from date of issue, or might be made redeemable at the pleasure of the Government at or after any period not less than five years nor more than forty years from date.

The Secretary of the Treasury on the 1st of June, 1865, issued bonds under said act in form as follows:

[Engraved and printed at the Treasury Department.]

165120 D. 165120 D.

Consolidated debt, issued under act of Congress approved March 3d, 1865. Redeemable after five and payable after twenty years from date.

1000. [Register's Office.] [Treasury Department. 1000

[Engraving of United States Treasury.]

[SEAL.]

It is hereby certified that the United States of America are indebted unto the bearer in the sum of one thousand dollars, redeemable at the pleasure of the United States after the first day of July, 1870, and payable on the first day of July, 1885, with interest from the first day of July, 1865, inclusive, at six per cent. per annum, payable on the first day of January & July in each year on the presentation of the proper coupon hereunto annexed. This debt is authorized by act of Congress approved March 3d, 1865.

(Across the face:) 1000.

Washington, July 1st, 1865.

S. B. COLBY,
For Register of the Treasury.

(On the back:) 1000.
Entered: E. M.
Recorded: E. N. D.
(At the foot of bond:) In God is our trust.

The amounts and numbers only, in substance, vary in different bonds.

The word "pleasure," as used in the act and the instrument, means when the Government wills it to be paid, and so dictates. (See Worcester's Dictionary and References as to the use of that word.)

"These bonds were known as five-twenty bonds."

Section 3697 of the Revised Statutes provides as follows:

"The Secretary of the Treasury is * * authorized * to pay * * and cancel any six per centum bonds

of the United States of the kind known as five-twenty bonds, which have become or shall * * become redeemable by the time of their issue. But the particular bonds so to be paid and cancelled shall in all cases be indicated and specified * * in a public notice to be given by the Secretary of the Treasury; and in three months after the date of such public notice the interest on the bonds so selected and advertised to be paid shall cease."

In 1876 the Manhattan Savings Institution purchased a large number of these five-twenty bonds, among others the bonds in question in these cases.

July 30th, 1878, and on different days in that year, the Secretary of the Treasury advertised by public notice that he would pay, among others, the bonds now in question.

The notice was, except as to dates and numbers, as follows:

SIXTY-FOURTH CALL.

REDEMPTION OF 5-20 BONDS OF 1865—CONSOLS OF 1865.

[1878. DEPARTMENT No. 82. SECRETARY'S OFFICE.]

TREASURY DEPARTMENT,
July 30, 1878.

By virtue of the authority given by the act of Congress approved July 14, 1870, entitled "An act to authorize the refunding of the national debt," I hereby give notice that the principal and accrued interest of the bonds herein below designated, known as "five-twenty bonds," of the act of March 3, 1865, consols of 1865, will be paid at the Treasury of the United States, in the city of Washington, on and after the thirtieth day of October, 1878, and that the interest on said bonds will cease on that day.

Coupon bonds, dated July 1, 1865, namely:

$50—No. 69001 to No. 69500, both inclusive.
$100—No. 117001 to No. 120000, both inclusive.
$500—No. 82001 to No. 84000, both inclusive.
$1,000—No. 151001 to No. 157000, both inclusive.
Total coupon $2,500,000

Registered bonds, "redeemable at the pleasure of the United States after the 1st day of July, 1870," as follows:

$50—No. 2351 to No. 2400, both inclusive.	
$100—No. 18351 to No. 18450, both inclusive.	
$500—No. 10601 to No. 10700, both inclusive.	
$1,000—No. 35451 to No. 35850, both inclusive.	
$5,000—No. 9901 to No. 10250, both inclusive.	
$10,000—No. 19051 to No. 19800, both inclusive.	
Total registered	$2,500,000
Aggregate	$5,000,000

The amount *outstanding*, included in the numbers above, is five million dollars.

All United States bonds forwarded for redemption should be addressed to the "Loan Division, Secretary's Office," and all registered bonds should be assigned to "the Secretary of the Treasury for redemption."

Where parties desire checks in payment for registered bonds drawn to order of any one but the payee they should assign them to the Secretary of the Treasury for redemption *account of the owner or owners, giving name or names thereof.*

JOHN SHERMAN,
Secretary.

All were alike in form, varying only in dates and amounts.

These notices were known as "*calls.*"

October 27th, 1878, the bonds in question were stolen from the Manhattan Savings Institution without guilt or want of proper care on the part of the officers of that institution. (Findings of Fact IV.)

According to the dates specified in the said calls all the bonds now in suit became payable prior to March 19th, 1879. (Findings Ib. V.)

The fact of the robbery was widely published in the newspapers and by a circular. (Findings Ib. VI.)

Thereafter, and after the day when they were payable by the calls of the Government, so advertised, they first appeared again, and were purchased by the adverse claimants, L. Von Hoffman & Co. and J. S. Morgan & Co., and their assignors. (Findings VIII and IX.)

The said adverse claimants and their assignors had knowledge of said calls when they purchased said bonds. (Findings Ib VIII and IX.)

All the bonds in question were transmitted to the Treasury of the United States for payment by the said adverse claimants, respectively, forthwith on their purchase and receipt by them. (Findings Ib. IX and XIV.)

Thereupon the Secretary transmitted the claims of all parties to the Court of Claims under section 1063 of the Revised Statutes, and that court upon hearing and determination entered judgment in favor of the Manhattan Savings Institution.

Brief.

On appeal, the sole question is whether these bonds were transferable, free of the rights of the Manhattan Savings Institution, after the day when the Government specified or set forth its pleasure, pursuant to law, that they be payable.

In the solution of this question the appellant, the adverse claimants, have in common raised, substantially, but two points for discussion:

1. That the bonds were not due until July 1st, 1885, the ultimate period provided in the absence of any call.

2. That by custom these Government bonds are regarded as transferable, free of equities after due, *i. e.*, they are cash instead of securities therefor, and on the same footing after as before maturity.

AS TO THE FIRST OF THESE POINTS, AND UPON THE REASON THEREOF.

These bonds are a contract, and are to be taken with reference to the intent of the parties, under the law. Now, if we look at the language of the acts of the Government and the instruments themselves there seems no great difficulty.

The Government wanted to borrow a large sum, and they devised these bonds as the basis of the required loans. They said, in substance, just this:

The United States owe $1,000, which will be paid after July 1st, 1870, on a day of which notice will be duly given; in the absence of such notice the same will be payable July 1st, 1885.

There could be no misunderstanding on the part of any holder that each of the bonds would become payable when the Government, in the mode and at the time to be indicated, as prescribed by law, should express its pleasure, *i. e.*, its will. It was not necessary to specify more on the face of the instrument than just what is there to the end purposed. An instrument is to be taken with reference to the law governing it. Take a promissory note on its face; it may be payable thirty days after its date, and yet there can be no failure to pay until the expiration of thirty-three days, according to law; and when reference is made in the books to the terms "on its face"—a phrase often used in reference to negotiable instruments—what is signified is the terms "on its face," according to their legal effect and intent.

This was the understanding of the public at large, for on those days bonds of this character were presented almost universally, and of this the court will take judicial notice. Again, this was the understanding of the parties, else why invariably make no claim for interest after those days? And look at the expressions of J. S. Morgan & Co. in the

letter dated September 1st, 1879: "Much to our surprise, payment has been withheld by the Treasury Department" of these bonds. Again, these bonds became due on the days fixed in the call, or these claimants would not all have been at the doors of the Treasury asking for principal and interest on or about the respective days when they presented these bonds. Still, again, why the notice in the call and in the law that on those days the interest on those bonds so selected and advertised for payment should cease? There could be no other reasonable or conscionable understanding than that by law the bonds would then be due and payable, and that after those days they would be overdue, and therefore matured obligations; and so by the law purchasers thereof thenceforth would hold subject to prior equities, and acquire no better title than the party from whom they received them.

But we are not left to reasoning alone. Upon the cases decided heretofore by this court the questions presented in these cases are settled.

Texas *v.* White, 7 Wall., 735, was a case where United States coupon bonds issued to Texas in 1851 were transferred to White while the Government of that State was in rebellion, after the 31st of December, 1864. The bonds were dated January 1st, 1851, payable by their terms to bearer, and redeemable after the 31st day of December, 1864; and each of them stated that it was "*transferable on delivery.*" The court held: "Purchasers of notes or bonds past due take nothing but the actual right and title of the vendors. The bonds in question were dated January 1st, 1851, and were redeemable after the 31st of December 1864. In strictness, (*i. e.*, in terms,) they were not payable on the day when they became redeemable (in terms); but the known usage of the United States to pay all bonds as soon as the right of payment accrues, except where a distinction between redeemability and payability IS MADE BY LAW, and shown on the face of the bonds, requires the

application of the rule respecting overdue obligations to bonds of the United States which have become redeemable and in respect to which no such distinction has now been made. Now, all the bonds in controversy had become redeemable before the date of transfer to White."

An attempt has been made to ward off the decisive effect of this authority by reason of what was said in connection with the phrase, "except where a distinction between redeemability and payability is made by law and shown on the face of the bonds." Now, by analyzing this, we shall see what it does not mean. Certainly it does not mean that in the absence of a distinction made by law, and shown, the rule laid down does not apply. What led to the phraseology will better appear, perhaps, by referring to a paragraph on page 703 of the reports, where it is stated:

"In pursuance of an act of the Legislature of Texas, the comptroller of public accounts of the State was authorized to go to Washington and to receive there the bonds, the statute making it his duty to deposit them, when received, in the treasury of the State of Texas, to be disposed of *as may be provided by law;* and enacting further, that no bond issued as aforesaid, and payable to bearer, should be 'available in the hands of any holder until the same shall have been indorsed, *in the city of Austin, by the Governor of the State of Texas.*'"

(The italics are in the original.)

Applying this to the phrase in question, if such parts of this act as were intended to control the payment of these Texas bonds had been inserted on their face, it would have made such a distinction as to control the terms "redeemable after the 31st of December, 1864"; and the rule referred to in connection with the known usage of the United States to pay, &c., would not, by consequence, apply.

But look at this phrase, "distinction between redeemability and payability made by law," and see if by possibility it can apply to the bonds stolen from the Manhattan Savings Institution. Those bonds are, in terms, as will be recollected, redeemable at the pleasure of the United States after July 1st, 1870, and payable on the 1st day of July, 1885. Now, is there any law making a distinction between redeemable and payable, as used in these bonds? None. The act of '65 and the provision of section 3697 of the Revised Statutes as to the mode of working out the pleasure of the United States by calls, numbers, &c., and fixing the day and place of presentation for payment, voice the instrument; but the use of the word "redeemable" invariably contemplates payment in connection therewith. So that in the case of the bonds in these suits, there being no such distinction as that referred to, the Supreme Court of the United States says: "the known usage of the United States to pay all bonds as soon as the right of payment accrues requires the application of the rule that purchasers of bonds past due take nothing but the actual right and title of the vendors to bonds of the United States which have become redeemable." And this point was affirmed in Texas *v.* Hardenberg, 10 Wall., 90, where it is said: "We have reconsidered the grounds of that decision, [Texas *v.* White,] and are *still* satisfied with it." And reaffirmed in Vermilye *v.* Adams Express, 21 Wall., 142, where it is said: "This point being, as the court considered, settled." Mr. Justice Miller, in delivering the opinion in the Vermilye case, says: "We have not quoted the *language* from the opinion in that case [Texas *v.* White] with any view of affirming it. It may admit of grave doubt whether such bonds, [the Texas bonds,] redeemable but not payable at a certain day, except at the option of the Government, do become overdue, in the sense of being dishonored, if not paid or redeemed that day." But, so far from repudiating the rule itself, as laid down in Texas

v. White, the court unanimously held it applicable to redeemable United States bonds; and on this point the decision is particularly emphatic.

By way of further comment on Texas *v.* White, the counsel for Von Hoffman & Co. said in his argument below: "There was no occasion, however, for the court in that case to determine anything as to the character of the bonds as over due or not, at the time they were purchased, for the court expressly decided that the defendants had actual notice of the equity of the State of Texas; so that, whether the bonds were overdue or not, the defendants acquired no title as against the State." Now, it is necessary to recall only a brief paragraph of the opinion to test this position. On page 375 of the report of this case it reads: "It would be difficult to give a negative answer to this question—whether notice of want of title was shown—if there were no other proof than the legislative acts of Texas. But there is other evidence which might fairly be held to be sufficient proof of notice, if the rule which we have adverted to [as to innocent holders without notice] could be properly applied to this case. But these rules have never been applied to matured obligations. Purchasers of notes or bonds past due take nothing but the actual right and title of the vendors." And, in concluding, the language of the opinion before referred to is: "*On the whole case*, therefore, our conclusion is that the State of Texas is entitled to the relief, and that White took past-due bonds," &c.

The rule is further set forth in section 1505 of 2d Daniels on Negotiable Instruments, one of the latest text-books on the question.

In proceeding with the consideration of the second proposition on the part of these claimants adverse to the Manhattan Savings Institution it would seem that the cases cited and the reasoning submitted already were sufficient. The counsel on the other side, however, have dwelt much

on the *lex mercatoria;* but these instruments are themselves only of recent introduction, and there can be no custom in regard to them which is a part of the Law Merchant. That is a graft upon the common law which by its age and universality has become such a branch of the unwritten law that courts have knowledge thereof. In the present cases, assuming any practice of trade in these bonds, (truly or not,) it is claimed to be only of recent growth; and if the wording of an instrument is such as to exclude any such practice, no such usage can affect the established rules settled by adjudication.

Crouch *v.* Credit Foucier, 8 L. R. Q. B., 386.

In Barnard *v.* Kellogg, 10 Wall., 391, Mr. Justice Davis says: "It is well settled that usage cannot be allowed to subvert settled rules of law." In Goodman *v.* Roberts, 10 L. R. Exchequer, 357, the C. J. of England says: "We must by no means be understood that mercantile usage, however extensive, should be allowed to prevail, if contrary to positive law. * * To give effect to a usage which involves a defiance or disregard of the law would be obviously contrary to a fundamental principle."

In the case of Vermilye *v.* Adams Express Co., 21 Wall., Mr. Burrill, an astute lawyer, submitted this proposition among others: "That the evidence showed that the particular class of securities * *—obligations of the Government—did not lose their negotiability when they had matured, but that they were bought and sold, dealt in, and circulated in the market afterwards as before; that accordingly the reason of the rule ordinarily applicable * * ceased to exist." But in delivering the opinion of the court, Mr. Justice Miller said: "We cannot agree with counsel for appellants that the simple fact that they were the obligations of the Government takes them out of the rule which subjects the purchaser of over-due paper to an inquiry into the circumstances under which it was

made, as regards the rights of antecedent holders." And further on he says: "Bankers, brokers, and others cannot, as was attempted in this case, establish by proof a usage or custom in dealing in such paper which, in their own interest, contravenes the established law. If they have been in the habit of disregarding that law, this does not relieve them from the consequences nor establish a different law."

In England, a decade or more ago, a disposition seemingly manifested itself to extend the rule laid down in the leading case of Miller *v.* Race by Lord Mansfield, 1 Burr, 452, and as stated in Swift *v.* Tyson, 16 Peters, 1, by Mr. Justice Story, in his quaint, incisive way, viz.: "There is no doubt a *bona-fide* holder for value, without notice before due, may recover." "This is a doctrine laid up among the fundamentals of the law, and requires no authority," &c. (See, also, Goodman *v.* Symonds, 20 Howard, 343.)

In volumes 19 and 20 of the Solicitors' Journal, which are to be found in the Law Library of the Capitol, attention was especially called to the arguments presented in the cases of Cronch *v.* Credit Foncier, Goodman *v.* Roberts, and other cases, where it was feared too much latitude was given to the negotiability of Government certificates and debentures, as well as certain kinds of scrip, so called; but no one of the English cases referred to had any relation to past-due instruments. So, too, in many of the English cases, both old and modern, certain negotiable instruments are spoken of as passing like money, but in no one of these cases is that phraseology used with reference to the transfer of paper after due. It cannot be wise to occupy time in reciting this class of cases in detail; many of them specifically maintain the doctrine that negotiable instruments passed due are transferable, subject to equities. Notably—

In Miller *v.* Race, *Ib.*

Geogier *v.* Mieville, 3 B. & C., 45.

Cronch *v.* Credit Foncier of England, L. R., 8 Q. B., 374.

Finally, these different claimants, adverse to the Savings Institution, are standing in the shoes of the robbers, so far as title goes. They derived under them matured obligations which the Supreme Court of the United States has repeatedly held to be governed by the laws of negotiable paper. And in Commissioners *v.* Clark, 94 U. S., 285, and Ellis *v.* Black., 244, and cases cited in Commissioners *v.* Clark, Ib., the rule is clearly recognized that where there is illegality shown in a previous holder the presumptions are against the title of his transferee; and in all the cases, if past due, subject to the former rightful owner.

HOWARD C. CADY,
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Of Counsel for M. S. I.

SUPREME COURT OF THE UNITED STATES.

Nos. 526. 527.

MORGAN AND OTHERS, Appellants,
vs.
THE UNITED STATES.

THE UNITED STATES, Appellant,
vs.
THE MANHATTAN SAVINGS INSTITUTION.

Supplemental Points.

The action of the syndicate with the Secretary did not change the law as to the transfer of the bonds in this case after maturity.

1st. The Secretary could make no other contract than just what the law and the bonds issued pursuant thereto provided for.

2d. There was in the correspondence, the interviews, and the transactions of Morgan and the syndicate with the Secretary of the Treasury and his agents nothing touching equities affecting bonds past due.

And this is illustrated by—

3d. Some of these bonds were altered materially, and so destroyed in law, except that as to the Manhattan Savings Institution the alteration was only spoliation. Now, could Morgan claim any understanding that the Secretary should take those? Nothing was expressed in the syndicate's agreement or in that connection as to either bad bonds or stolen past-due bonds.

HOWARD C. CADY,
WALDO HUTCHINS,
Of Council for M. S. I.